UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1941.

No. 3796.

CARLOS M. DE CASTRO,

PETITIONER, APPELLANT,

v.

BOARD OF COMMISSIONERS OF SAN JUAN,

RESPONDENT, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.
JUDGMENT, JANUARY 14, 1942.

TRANSCRIPT OF RECORD.

HUGH R. FRANCIS,
GABRIEL DE LA HABA,
for Appellant.

F. FERNANDEZ CUYAR,
for Appellee.

BOSTON:
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1942

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BOARD OF COMMISSIONERS OF SAN JUAN,
RESPONDENT, APPELLEE.

TRANSCRIPT OF RECORD.

[FILED IN CIRCUIT COURT OF APPEALS BY LEAVE OF COURT JULY 17, 1942.]

IN THE SUPREME COURT OF PUERTO RICO.

No. 8070.

CARLOS M. DE CASTRO, Petitioner and Appellant,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, Defendant and Appellee.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN.
CERTIORARI.

OPINION OF THE COURT

DELIVERED BY MR. JUSTICE WOLF.

San Juan, Puerto Rico, June 28, 1940.

Pedro Ramirez Nadal preferred charges against Carlos M. de Castro, city manager of the capital, before the Board of Commis-

sioners of the Government of the capital. On November 10, 1938, the Board made the charges its own and impeached the city manager. The city manager was duly notified and answered. A public hearing began on November 21, 1938, and lasted several sessions. On January 5, 1939, the city manager was suspended from office. The hearing continued until February 17th. On April 5 the city manager was removed from office.

Nineteen charges were made against the city manager. They were numbered V to XXIII. The paragraphs from I to IV were devoted to the introductory statements of the charges. Evidence was offered on seven of these. So that the trial was begun nominally on all 19 charges. The manager went to trial, it may be presumed, at the beginning without any specific knowledge of which charges were to be presented. We say this now for various reasons, one of which is that the appellant in this court maintains that none of the charges as preferred was the sufficient statement of a charge of removal for just cause. The appellee, on the other hand, maintains that all the charges were sufficiently specific and that the defendant needed no further notice. If any one of the 19 charges was sufficient to justify the removal of the city manager, then great care should have been taken in its composition. If, on the other hand, the charges are to be considered together, it is quite a question whether or not the court below might not have considered the charges together to see whether there was enough in all of them to justify the removal. We had a serious doubt as to whether the principal charge on which the appellee and the court below relied, as to the alleged disastrous condition of the aqueduct of San Juan, was the just cause to which the law refers. We shall revert now to the four charges that were finally presented to the District Court of San Juan.

Charge No. X says:

> "On or about November 24, 1937, one Jose Torres Silva, an employee of the Government of the Capital, when completely intoxicated, fired two revolver shots in the paymaster's

office of the Municipal Building while he was on duty, and the fact came to be known by the aforesaid Carlos M. de Castro and he took no action in regard to said acts of Mr. Torres Silva."

The Board found:

"Whereas it appears from the testimony of the witness presented both on behalf of the prosecution and of the defendant, and especially the statements of the City Manager and Jose Torres Silva, that the imputation contained in the Xth paragraph of the complaint constitutes negligence on the part of the City Manager, and that his attitude is far from being the 'good conduct' of which the Organic Act of this Government speaks, and on the contrary, the attitude and words of the City Manager in relation to that incident clearly constitutes 'immoral or incorrect conduct' as determined in that law."

Charge No. XII says:

"On or about October 2, 1937, in the matter of an accident suffered by automobile GM201, property of the Capital, caused by the negligence of Jose Marcos Morales, an employee of the Government of the Capital, as had been decided by the Auditor of the Capital, the aforesaid Carlos M. de Castro, in his position as City Manager, required the Auditor of the Capital personally and through the School Director, to file away the case, although he knew that such a filing would be illegal and against the interest of the Capital. Said Jose Marcos Morales was an employee under the direct charge of the aforesaid Carlos M. de Castro in his capacity as City Manager.

"In this case Carlos M. de Castro, in his aforesaid capacity and in his office in the City Hall, threatened and tried to frighten said Auditor, so that he would compromise said case, all of it against the interests of the Capital."

The Board said:

"Whereas it appears from the testimony of witnesses that the conduct of the City Manager in the specific incident to which paragraph XII of the List of Charges refers, and which is contained therein, is in every way not the 'good conduct' determined by the act creating this Government of the Capital, and on the contrary, the actions of the City Manager constitute a violation of the duties imposed by the statute on the City Manager and are included in the phrase 'immoral or incorrect conduct' determined by the aforesaid act."

Charge No. XXII says:

"The aforesaid Carlos M. de Castro, in his stated capacity, has not taken the necessary steps to enforce the ordinances of the Government of the Capital, to wit:

"1. Ordinance No. 249, as amended. 2. Ordinance No. 360; 3. Ordinance No. 364; 4. Ordinance No. 367; 5. Ordinance No. 369; 6. Ordinance No. 371; 7. Ordinance No. 380; 8. Ordinance No. 385; 9. Ordinance No. 393; 10. Ordinance No. 394; and various other of the ordinances of the Capital."

The Board said:

"Whereas it has been fully shown by the documentary evidence offered, by the testimony of the Secretary of the City Manager himself, that he, voluntarily, purposely, systematically and negligently failed to enforce, without any moral or legal excuse, knowingly and ignoring the express orders of this Board, the duties and obligations imposed upon him by Ordinances Nos. 360, 367, 371 of this Board, adopting therefore an attitude contrary to the good conduct prescribed by the Act of the Government of the Capital or incurring in the 'immoral or incorrect conduct' determined by that law."

Charge No. 6 says:

"The aforesaid Carlos M. de Castro in the discharge of his

duties as City Manager has not inspected nor managed the aqueduct system of the Capital which supplies water to the Capital and to the municipalities of Bayamon and Catano and in part to the municipality of Rio Piedras, nor does so at present. Said Carlos M. de Castro has allowed and allows in his said capacity, that the equipment of said system, including dams, filter plants, mains, valves and other apparatus should fall into a state of carelessness and disorder. He has allowed and allows the water supplied by said system and consumed by the stated municipalities to be contaminated in such a way that it has menaced and menaces public health and welfare.

"Due to that state of carelessness and disorder, the supply of water has been interrupted at various times and there is the menacing possibility that said supply may be interrupted at any moment.

"Due to such disorder in the management of the water supply system, the Capital is unable to collect and does not collect payment for the water served to many consumers, and Carlos M. de Castro has allowed and allows that many consumers have used and use the water service without paying for said service."

The Board said:

"Whereas the documentary evidence offered, not only to support the complaint, but on behalf of the defendant, and the testimony of witnesses and experts offered to support the charge contained in the 6th paragraph of the complaint, including the evidence of the same nature offered by the defendant, show beyond shadow of doubt that the City Manager incurred in negligence and adopted an attitude highly prejudicial to the interests of the community of this capital, not paying attention and on the contrary ignoring the repeated observations made to him orally and in writing by the authorities of the Insular Department of Health in relation

to the contamination of the water for public consumption; in not paying attention to the repeated observations and requests made to him by various employees of this Government of the Capital itself in that regard, in all thereby showing he has not observed the good conduct to which the law creating the Government of the Capital refers, and incurring in neglect and 'in 'immoral and incorrect conduct'; and—Whereas this Board understand that because of the reasons, statements and facts hereinbefore expressed and recited, there exists just cause for removing the City Manager because of carelessness, inexcusable negligence and immoral and incorrect conduct in the discharge of his office. . . ."

On April 11, 1939, the city manager asked the District Court of San Juan for a writ of certiorari which issued. A hearing was held on June 1, 1939. Judgment was rendered on August 21, 1939, quashing the writ. The defendant of course assigns various errors which we find it unnecessary to discuss in any particular order.

In point of fact a large part of the discussion in the court below and in the briefs of the appellant was that section 22 of Act No. 99 of 1931 (Session Laws, pp. 626, 639), only permitted the presentation of charges for felonies or misdemeanors. It reads in Spanish as follows:

"El Administrador de la Capital podrá ser destituído por la Junta de Comisionados por justa causa, previa audiencia y oportunidad para defenderse por sí o mediante abogados. Serán causas para destituir al Administrador de la Capital: cualquier acto realizado por él que constituya un delito grave (*felony*); cualquier acto realizado por él fue constituya un delito menos grave (*misdemeanor*) y que implique depravación moral, abandono, negligencia inexcusable en el desempeño de su cargo, o conducta inmoral e incorrecta en el desempeño del mismo."

As the statute was enacted in Spanish the Spanish text should prevail. The English text is as follows:

"The City Manager may be removed by the Board of Commissioners, for just cause, upon hearing and an opportunity to defend himself either in person or through attorneys. The following shall be causes for the removal of the City Manager: Any act of his constituting a felony; any act of his constituting a misdemeanor and implying moral turpitude; or carelessness, inexcusable negligence in the performance of his duties, or immoral or incorrect conduct in the exercise thereof."

The court below held that besides crimes and misdemeanors the mayor might be impeached for grave negligence in the discharge of his duties. The effect of the court's decision was to follow the literal words of the English text rather than of the Spanish, but we agree that it must have been the intention of the Legislature that grave negligence should also be a cause for removal. This was the way both texts read for the review by certiorari of a subordinate officer's removability under previous acts. In the Spanish text we think the word "*y*" after the word "*misdemeanor*" should be read as "*o*" because any other interpretation of the Act would lead to an absurdity.

These conclusions are borne out by section 21 of Act No. 99 which is as follows:

"The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

We need not stress the point too much, because assuming the correctness of our conclusion and that of the court below the case should be reversed on other grounds.

The court held that charges X and XII had not been proved. We find no reason to challenge the correctness of this decision, especially as the appellee does not do so.

When it came to charges XXII and VI the court held that the evidence was contradictory and that therefore the findings of the

Board were conclusive. Reliance was placed on the following cases. *Coll* v. *Todd*, 35 P.R.R. 572; *Rivera* v. *Asamblea Municipal*, 39 P.R.R. 71; *Fernandez* v. *Pavia*, 42 P.R.R. 740, and *Valldejuli* v. *De Castro*, 52 P.R.R. 275. We may interpose here that we are not at all convinced that the situation created by Act No. 99 for the removal of a city manager is identical or even similar to the right of the head of a department to remove one of his subordinates. However this may be the fact remains that in all of these cases the reader would have had some idea from the opinion of the essential nature of the charges against the petitioner therein.

From the briefs of neither of the parties do we have a clear idea of what the mayor failed to do or what he ought to have done with respect to the aqueduct. It is obvious that the rule for the removal of subordinates should be different because the mayor has a responsibility for his employees. There is no relation of employer and employee between the Municipal Assembly and the city manager. When a city manager is about to be removed, the Municipal Assembly ought to make the just cause for which he was to be removed specifically clearer than was done in this case.

Charge No. XXII relates to the failure of the city manager to put into force certain ordinances. We shall not attempt to recite them. The court held that the evidence was contradictory. We have examined the evidence and we do not find that the failure to put into effect some of these ordinances was anything more than perhaps an abuse of discretion or a difference in opinion as to the merits of the ordinances, and were not the just cause to which the statute relates.

The really important charge in this case was the one that related to the aqueduct. In our opinion all the other charges were negligible. It may be said, however, that if the charge against the mayor had originally been solely for his conduct in regard to the administration of the aqueduct, he might have come before the Municipal Assembly better prepared to defend his case. As we

have intimated before, we have no idea at the present writing exactly what the mayor should have done that he did not do.

There was a long trial. A number of prominent citizens were assemblymen and took part in the trial of the city manager, but we did not find anything in the record on the part of them to show any great activity with respect to the conduct of the aqueduct. They might be held to share some of the responsibility. We find nothing in the brief of the appellee and practically nothing in the typewritten evidence certified up to us that would specifically indicate to us what the mayor ought to have done under the circumstances of this case. Evidence of what previous mayors had done was, as we read it, excluded when the mayor attempted to offer evidence of that kind. Enough we find to show that when the mayor took charge of the city government the aqueduct was already in a troublesome condition.

From some of the evidence it definitely appeared that if the City of San Juan could have relied alone on the water that came from Guaynabo there would have been no great difficuty. However, the fact remained that the city before the advent of Mr. de Castro had used for a necessary supply the waters that came from Rio Piedras. Now this volume of water was to a certain extent contaminated with coli-bacilli. It sufficiently appeared from the evidence that previous mayors and Dr. de Castro, on the advice of their own engineers, felt bound to use both sources of supply to furnish the city of San Juan with the necessary water. One of the declarations we found in the evidence showed that ships in the Island were not using the water of the aqueduct, but a subsequent bit of testimony was that they were using it at the time of the hearing.

Meanwhile also San Juan was very well supplied with water and no pestilences or other great harm have happened to the population by reason of the condition of its water supply.

During the time that Mr. de Castro was mayor the population of the City of San Juan increased not only by natural growth and flowing from all parts of the Island, but the PRERA, the PRRA

and other Federal agencies caused an increase of population as well as an increase of that kind of construction where water would be used in greater volume.

The mayor by his testimony showed that he had become aware of the difficult situation and he was attempting to remedy it. He hoped and tried for greater funds but could not get them. Nevertheless he obtained some and attempted to relieve the demand by an increase of water supply.

We have examined the evidence despite the failure of the appellee to sum it up for us and we can not find or hold that the actions of the mayor, so far as demonstrated to us, with regard to the condition of the aqueduct were the just cause for his removal. The mayor had a responsibilty for all the works of the important municipality of San Juan. We are not pretending to say that he could not have done more to improve the condition of the aqueduct, but the appellee has not pointed out the way.

On the theory that the district court could not examine the supposed conflicting evidence because the appellee was the sole judge thereof, the latter says that it should not attempt to discuss the 600 pages of evidence. As we have said before, the specific charges against the mayor with respect to the aqueduct do not stand out as being the just cause to which the statute refers. Given the strict attitude of the appellant toward the consruction of section 22 of Act No. 99, we are not totally surprised that the court should have felt itself bound to take a similar strict attitude with respect to the kind of removals which it had a right to review, namely, infractions of the Constitution, the Organic Act or the laws of Puerto Rico. We, however, think that if there is a strong doubt as to the sufficiency of the charges the law is and should be that a mayor ought not to be removed. To hold otherwise is against the law.

While we hold that the mayor might be removed for grave negligence, we feel also bound to hold that the evidence of such grave negligence ought to be somewhat similar to that required for a crime, felony, or a misdemeanor. *Noscitur a scociis.* However, even if the charge with respect to the aqueduct had been a

little graver than it appears, given all the precedents with respect to the aqueduct, we do not think standing alone it was a just cause for the removal of the city manager. This is one of the principal reasons for not agreeing with the court below. We likewise have a serious doubt whether the charges were sufficiently specific and whether the court below did not have a right to say so.

The judgment appealed from must be reversed, and in its stead a new one rendered, annulling Ordinances No. 370 of January 5, 1939, and No. 373, of April 5, 1939, which decree the suspension and removal of the city manager, and in consequence thereof ordering the reinstatement of the petitioner Carlos M. de Castro in his office of city manager, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay.

ADOLPH G. WOLF,
Associate Justice.

[Same Title.]

JUDGMENT.

San Juan, Puerto Rico, June 28, 1940.

For the reasons set forth in the foregoing opinion, the judgment appealed from, which was rendered by the District Court of San Juan on August 21, 1939, is hereby reversed, and in its stead a new one rendered, annulling Ordinances No. 370, of January 5, 1939, and No. 373, of April 5, 1939, which decreed the suspension and removal of the city manager, and in consequence thereof, ordering the reinstatement of the petitioner Carlos M. de Castro in his office of city manager, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay.

It was so ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

MOTION TO STAY THE EXECUTION OF THE JUDGMENT INSOFAR AS IT ORDERS THE REINSTATEMENT OF PETITIONER IN THE OFFICE OF CITY MANAGER OF THE CAPITAL.

[Filed October 27, 1941.]

Now comes the Board of Commissioners of San Juan, respondent and appellee in these proceedings, through its undersigned attorneys, and to this Honorable Court respectfully states and requests:

1. That on June 28, 1940, this court rendered judgment in the instant case reversing the one rendered by the District Court of San Juan and thus annulling certain resolutions adopted by the respondent which decreed the suspension and removal of petitioner from the office of city manager of the capital. The judgment of this court also ordered the reinstatement of petitioner Carlos M. de Castro in the office of city manager of the capital.

2. The aforementioned judgment was appealed from to the United States Circuit Court of Appeals for the First Circuit which dismissed the appeal and the Supreme Court of the United States afterwards denied the petition for certiorari filed by this party to review the judgment rendered by the Circuit Court for the First Circuit. The mandate of the judgment rendered by the Supreme Court of the United States is at present in the hands of the clerk of this court, for which reason this Honorable Court has full jurisdiction once more over the instant proceedings.

3. Respondent alleges that although the judgment rendered on June 28, 1940, insofar as it ordered the reinstatement of petitioner in the office of city manager of the capital, was fully justified in view of the findings of facts and of law to which the court arrived in its opinion, the part of said judgment which orders petitioner's reinstatement should not be executed and such reinstatement should not be decreed for the simple reason that the term

during which petitioner should hold the office of city manager of the capital has already expired, and said petitioner has no legal right whatsoever to hold said office again, since his tenure expired in January, 1941, when a new Board of Commissioners was elected by the voters of this municipality and when said new Board exercised the faculty granted to it by law of electing the city manager of the capital.

4. Act No. 99 of 1931, creating the new Government of the capital, as it has been subsequently amended, provides that said government shall be composed of the Board of Commissioners of San Juan and the city manager of the capital, the treasurer, the director of public works, the director of health and charities, the school director, the auditor and the secretary of the capital, the statute failing to fix any definite term for any of the executive offices, but fixing such tenure for the Commissioners who compose the Board of Commissioners of San Juan. The majority of the members of this Board (five) is elected every four years and thus the term of office of the appointing power which designates the city manager is definite and fixed, the theory that the tenure of office of the city manager is in excess of four years not being consequently in harmony with the statute.

> "If no definite term is fixed, the office is held *for the term of the appointing power*, or at the will of the authority which conferred it provided the term so conferred does not extend beyond that of the appointing power." 43 C.J. 642, Sec. 1058.

Section 39 of the aforementioned act expressly provides that all the appointments of employees shall be made by the respective officers and that such employees shall be appointed *"for the term for which each officer is appointed"*, and it is obvious that the statute must be construed in the sense that the tenure of office of each and every one of the employees and officers is not perpetual and eternal, for life, but for four years, such as is the tenure of the appointing power who selects them. It would be

absurd to construe the statute in the sense that all the officers and employees of the Government of the capital, once appointed, shall hold their offices for life. Such construction would be unreasonable, contrary to the legislative intention and manifestly antidemocratic. It would be antidemocratic since, bearing in mind that the law provides that every four years the voters of the municipality shall elect their Commissioners or city manager, it is not in harmony with democratic practices that the municipal administration, whose existence, according to law, cannot exceed four years, shall be able to appoint employees for a term longer than the one for which it is elected and because if it has been the legislature's intention that every four years the voters should designate the Commissioners who are to be intrusted with the municipal administration and who according to section 21 of the statute shall appoint a city manager, giving thus an opportunity for other political or economic ideas to prevail, it is not conceivable that it should be possible to compel these new Commissioners to develop their political or economic plans with employees or officers unwilling to support them due to their contrary views. The statute allows certain political or economic ideas to prevail in the polls and it must also be understood that it permits its consequences. If it were to be held that all the officers and employees of the Government of the capital hold their employments for life, such a thing would have the effect of creating for their benefit a right which the legislature denied them when it excluded them from the classified Civil Service right, which, according to such interpretation, would be acknowledged them merely by their appointment and without proving the requisites of competence demanded from those within the Civil Service.

It is true that section 21 of the statute provides that the city manager shall be appointed by the Board of Commissioners and shall hold his office "during good conduct", but such provision must be understood in the sense that it binds the city manager, under threat of removal, to observe good behavior during his tenure of four years. It has thus been construed by the trend of

decisions. See *Woolley* v. *Frock*, 105 Atl. 489, wherein the facts and the issues joined were almost identical to those of the case at bar, and where the following conclusion was arrived at:

> "We are of opinion that the relator's term was fixed by the statute for the life of the board: that is to say, for four years."

Further on in the opinion rendered in the above cited case, the court considers the different sections of the law which provide for the election of the Commissioners and for the appointment of the mayor by the Commissioners once the latter have been elected, the statute failing to provide any term of office for the mayor but providing a tenure of four years for the Commissioners, and providing further that the mayor and any other officer might be removed for cause, after a hearing, etc.

The court then expressed itself as follows:

> "Here there is a positive injunction that the presiding officer must be chosen 'at the first meeting after their election'. This positive injunction applies when each new board assumes its official duties. This occurs of necessity at intervals of four years. It is the initial act of organization of each new board. At such initial meeting the commissioners are directed to make the choice. We may paraphrase thus what was said in *Smith* v. *Reagan*: 'From this it necessarily follows that, as the meetings (for the purpose now considered) are to occur at intervals of four years, the term of office is limited to the period of time between them, and is, therefore, fixed by law, within the meaning of the act, for the term of four years.' "

On this point, the doctrine stated in the cases of *Burgan* v. *Civil Service Commission*, 86 Atl. 929, and *Smith* v. *Reagan*, 23 Atl. 1012, among others, may be examined.

It is not conceivable to construe the statute in the sense that all the officers and employees of the Government of the capital hold

their offices and employments for life, as such construction would bring about a complete revolution in the general tenure of office and it would involve a radical alteration in the universal practice of government of not appointing officers or employees for life. See immediately following how the Supreme Court of the United States refuses to construe statutes in such a sense:

> "To construe the statute as contended for by appellant is to give an appraiser of merchandise the right to hold that office during his life, or until he shall be found guilty of some act specified in the statute. If this be true, a complete revolution in the general tenure of office is effected, by implication, with regard to this particular office. We think it quite inadmissible to attribute an intention on the part of Congress to make such an extraordinary change in the usual rule governing the tenure of office, and one which is to be applied to this particular office only, without stating such intention in plain and explicit language, instead of leaving it to be implied from doubtful inferences. The rule which is expressed in the maxim is a very proper one and founded upon justifiable reasoning in many instances, but should not be accorded controlling weight when to do so would involve the alteration of the universal practice of the government for over a century, and the consequent curtailment of the powers of the executive in such an unusual manner." *Shurtleff* v. *United States*, 47 L. ed. 828, at page 832, 189 U.S. 311.

This Honorable Court takes judicial notice of the fact that, since the approval of Act No. 99 of 1931, creating the new Government of the capital, not only all government officers, but likewise, petitioner Carlos M. de Castro himself, have construed the statute in the sense that the tenure of office of the city manager is of four years. The first city manager elected by the first Board of Commissioners was Mr. Benitez Castano, and already in the elections of the year 1936, Carlos M. de Castro himself took active part in the political campaign, appearing as a candidate for city manager in opposition to candidates for the same office sup-

ported by other political parties, and the petitioner secured his appointment of city manager due to the fact that the Board of Commissioners was elected by the party to which petitioner belonged and in whose ticket he appeared as a candidate for city manager. In 1940, all the political parties presented their respective candidates for the office of city manager in the understanding, of course, that the Commissioners proposed by said political parties should be elected.

In other words, since the approval of Act No. 99 of 1931, until the present, all government officers, political parties, the different city managers and petitioner himself have construed said statute in the sense that the office of city manager has a four year tenure. And it should be also observed that the Legislature of Puerto Rico, notwithstanding that it knew this construction, has not amended the statute, thus showing that the prevailing construction is the correct one:

> "It is a rule of construction that, if a statute is of doubtful import, a court will consider the construction put upon the act when it first came into operation and that construction, after lapse of time, without change either by the legislature or judicial decision, will be regarded as the correct construction.
>
> "So also, the practical construction given to a statute by public officials and acted upon by the people, is not only to be considered, but in cases of doubt will be regarded as decisive. It is allowed the same effect as a course of judicial decision. The legislature is presumed to be cognizant of such construction, and when long continued, in absence of legislation evincing a dissent, the courts will adopt that construction.
>
> "....
>
> "Plaintiff in error accepted his appointment presumably with knowledge of the limitation affixed to his tenure by the construction referred to. He therefore took subject to that construction and cannot now be permitted to insist upon a different construction." *Smith* v. *Byron*, 40 S.E. 654.

"When the legislature has silently acquiesced in administrative construction of a statute by failing to amend it, such construction is accepted generally by the courts as persuasive." *Smith* v. *State*, 110 P. (2d) 851.

It is an acknowledged legal doctrine that when the duration or term of an office is a question of doubt or uncertainty, the interpretation should be followed which limits such office to the shortest term:

"When the duration or term of an office is a question of doubt or uncertainty, the interpretation should be followed which limits such office to the shortest term." *Dobkins* v. *Reece*, 17 S.W. (2d) 81.

"Where there are two modes of construing a statute, that should be followed which fixed the term at the shortest period." *Chamske* v. *Cowan*, 284 N.W. 711.

See the cases of *State* v. *McKay*, 155 S.W. 396; *People ex rel. Eldred* v. *Palmer*, 47 N.E. 1084, and Meechem on Public Officers, section 390, which uphold this same theory.

For the foregoing reasons, the respondent Board respectfully prays this court to issue an order, in these proceedings, staying the execution of the judgment rendered in the case at bar on June 28, 1940, insofar as said judgment orders the reinstatement of petitioner Carlos M. de Castro in the office of city manager of the capital, as the tenure of said office, for which petitioner was elected in the year 1936, expired in January, 1941.

San Juan, Puerto Rico, October 27, 1941.

F. FERNANDEZ CUYAR,
H. GONZALEZ BLANES,
Counsel for the Respondent Board.
F. FERNANDEZ CUYAR.

Copy of this motion to stay the execution of the judgment served this twenty-seventh day of October, 1941.

GABRIEL DE LA HABA,
Counsel for Petitioner.

[Same Title.]

OPPOSITION OF APPELLANT.

[Received November 4, 1941, 9:10 A.M., Supreme Court of Puerto Rico.]

Now comes the petitioner-appellant before this Honorable Court and respectfully states:

That the appellee Board has filed a petition requesting this court to stay the execution of the judgment rendered in this case insofar as the same orders the reinstatement of petitioner-appellant, on the ground that his term of office as such city manager, for which position he was elected in the year 1936, expired in January, 1941.

Appellant's petition, according to what it requests of this court, is based on an erroneous assumption, that is, that the office of city manager is an elective office when the law creating the special government for San Juan, Act No. 99 of 1931, provides in its section 22 that the city manager shall be appointed by the Board of Commissioners and shall hold his office during good behavior.

This Honorable Court cannot take judicial notice of facts which do not exist but in the mind of the appellee and in the more or less subtle arguments set forth by its counsel. The fact remains that Mr. Benitez Castano did not cease in the exercise of his office because a part of the Board of Commissioners was again elected in 1936, but because of his voluntary resignation, effective many months after January, 1937, and that neither did the election of the city manager appear in the electoral ticket as contended by the appellee in the seventh page of its petition, since such office was not an elective office. The fact that the Commissioners to be elected by popular vote campaigned informing the people about the person who would hold the office of city manager if they were elected, does not imply that the tenure of the city manager ceased with the term of office of some of the Commissioners. It is convenient to recall in relation to this matter that the Board of Com-

missioners is composed at present of nine Commissioners of which four are appointed by the Governor of Puerto Rico and five are elected by popular vote. See Act No. 10 of March 24, 1937, which amends section 50 of Act No. 99 of 1931.

When Mr. de Castro was substituted by Mr. Fernando J. Geigel at the time when the former was removed from the office of city manager by the Board of Commissioners, Mr. Geigel held his office without a new appointment by the Board of Commissioners until a long time after January, 1941, and it was only due to his voluntary resignation that the Board designated a new city manager, Mr. Gonzalo Diago.

This also reveals that the Board of Commissioners did not believe nor construe that the term of office of the city manager ceased when the five Commissioners elected by popular vote in the elections of the year 1940 took possession.

With respect to the argument set forth by the appellee that all the employees of the Government of the capital would hold their offices for life if it should be construed that the office of city manager is held by life tenure, or during good behavior, as provided by law, we consider said argument beyond all logic and irrelevant for the following reasons:

First, because we are not concerned with the construction of the statute with reference to officers and employees of the Government of the capital but merely with the interpretation of the act specifically in relation to the office of city manager of the capital; and second, because sections 26 and 29 of Act No. 99 of 1931, do not fix a definite or indefinite tenure for the officers and employees of the Government of the capital, and consequently, the unchanging decisions of courts cited by the appellee would be applicable to the effect that when there is no fixed term of office, the office is held during the tenure of the appointing power or at its will. We are of opinion, therefore, that there is no conflict whatsoever in regard to this point, since all the officers of the capital mentioned in section 26 of the statute would hold their offices at the will of the city manager and all the employees appointed by said officers

would hold their employments at the will of the same. Furthermore, it should be observed that section 18, subdivision 5 of Act No. 99, authorizes the Board of Commissioners to create such employments which may be strictly necessary for the Government of the capital and to include the corresponding salaries in the budget.

In accordance with this authority, the Board of Commissioners may fix the term of the employments, coinciding with the term of appointment made by the city manager of the capital for the officers of the same in accordance with section 26. We see nothing in the law to prevent the city manager of the capital from fixing the term of office of the officers upon appointing them in accordance with the authority granted to him by the said section of the statute.

We are of opinion that the questions raised by the appellee with respect to the tenure of office of the city manager of the capital have already been considered and adjudged by this Honorable Court as may be seen from the brief filed by the appellant, pages 33 and 34; brief of the appellee, pages 29 and 30, and the opinion of this Honorable Court, pages 7, 8 and 9.

We cannot conceive under what authority of law the appellee may request of this Honorable Court that it stay the execution of a final judgment which has been appealed from to the United States Circuit Court for the First Circuit and which has been the object of a petition for certiorari filed in the Supreme Court of the United States. This Honorable Court lacks jurisdiction to stay the execution of its judgment, more so when, as we have already argued, the question raised was the object of judicial decision and is in consequence, *res judicata.*

Apart from what we have already stated, the interpretation placed by the appellee on the statute in relation to the term of office of the city manager of the capital is completely erroneous since it is based on statutory precepts which are completely different to the provisions of section 22 of Act No. 99 of 1931.

The cases and comments relied upon by the appellee are based

on statutes which do not fix a definite term of office to an officer or which fail to fix any term at all.

The statute creating a special government for the capital fixes a term which is "during good conduct" and consequently, none of the cases or comments cited by the appellee is applicable to our case.

The Honorable Court may examine 43 C.J. 642, cited by the appellee, which begins saying: "If no definite term is fixed . . ." and will be convinced that this citation is not applicable to the case at bar.

Nor is the case of *Woolley* v. *Flock*, cited by the appellee in the fifth page of its motion, applicable, since as it is aptly stated in said case, the Act does not fix the term of office of the mayor, etc. It will be seen that said case is based on a statute which does not fix any term of office to the mayor.

The case of *Shurtleff* v. *United States*, cited by the appellee in the sixth page of its motion, is not applicable to the case at bar since the statute therein construed, section 12, 26 Stat. at L. 131, 467 U.S. Comp. Stats. 1901, page 1886, did not fix any term whatsoever for the office of general appraiser, whose appointment should be made by the President, and the judgment of the Supreme Court of the United States was predicated on the fact that the President was justified in removing such officer for causes other than those specified in the statute since it did not expressly limit the removal by the President to said causes.

On the other hand, there are numerous judicial decisions to destroy the theory set forth by the appellee.

The appointment of officials and officers in regard to the duration of their offices has only three aspects:

> "Officers and persons in public positions hold, first, for a definite term; second, during good behavior; or, third, at the will or discretion of some other officer or department. A definite term is where the law so prescribes, which may be by statute, or the Organic Law of the State." 2 McQuillin Municipal Corporations, (2d ed.) page 163.

"All offices, the tenure of which is not fixed by the Constitution or limited by Law, must be held either during good behavior or (which is the same thing in contemplation of Law), during the life of the incumbent." *Ex Parte Hennen,* 38 U.S. 257, 10 L. ed. 152.

In the absence of any constitutional restriction, there can be no objection whatsoever to a person holding an office during good behavior, which may mean that said person hold the office for life. There is no constitutional provision in Puerto Rico which fixes the tenure of municipal officers and the Organic Act leaves all matters concerning municipal legislation to the discretion of the legislature.

"Ordinarily in the absence of any constitutional restriction there is no inherent objection under the American form of Government to the creation of public offices with the tenure of good behavior." 22 R.C.L. page 551.

The case which we cited in the lower court and before this Honorable Court at the time of discussing the interpretation of section 22 of the special law creating the Government of the capital, is the case of *Smith* v. *Bryan,* 10 Va. 199, 40 S.E. 652, where the Supreme Court of Virginia stated the following:

"Tenure during good behavior is for life unless sooner terminated for cause."

It is known that there exist many provisions in the Federal government as well as in the state governments which determine the appointment of officers to hold their offices during good behavior.

If it is recalled that the purpose sought by the Legislature of Puerto Rico in creating a special government for San Juan, practically removing a whole government elected by popular vote in the year 1931, was to introduce the system of "City Manager", who should not depend at all on political favoritism and who could hold his office without being tied to the whims and uncertainties of partisan politics, it will be better understood why the

legislature provided that this office should be held while the incumbent observed good behavior.

It was intended precisely to make an experiment and an exception in the case of San Juan, distinguishing the government of this City from those of the other municipalities regulated by the Municipal Law of Puerto Rico which provides for the appointment of mayors for a definite term of four years.

If the legislature chose this system and in practice it should fail, the courts are not the ones called upon to amend the laws by judicial construction when these laws are clear, free from ambiguities and are upheld by administrative and judicial precedents, but it is the legislature itself the one which should correct this by an amendment to the law.

This manner of amending a statute now propounded by the appellee is indeed contrary to all principles underlying democratic institutions in our nation since it seeks to have the Judicial Department interfere with a matter which is of the sole and exclusive province of the Legislative Department of the Government.

The appellee also forgets that the Board of Commissioners of the capital is a continuous body which does not change although some of its Commissioners may change and that, consequently, the fact that every four years a part of the Board be elected does not mean that the tenure of the Board of Commissioners expires every four years since, as we have said, the life of this Body is continuous. See on this point the case of *Taylor* v. *School District*, 47 Pac. 758.

In conclusion, we believe that appellee's petition does not set forth any solid legal ground to consider its pretensions as the same are based on erroneous reasons and on statutes different from those of Puerto Rico, since ours clearly provides that the term of office of the city manager of the capital shall last during good behavior and this court has already decided that the causes which brought about his removal were not sufficient and ordered his reinstatement dated back to the date when he was suspended from office and pay on January 7, 1939, thus entitling the appel-

lant to continue holding his office while he observes the sole condition imposed by the legislature that he should hold the office of city manager during good behavior.

If this Honorable Court should determine to hear the parties in relation to the appellee's petition, the appellant could furnish this court more abundant judicial decisions in relation to the matters herein discussed with the brevity and haste forced upon us by the attendant circumstances.

For the foregoing reasons it is prayed of this Honorable Court that it deny the petition of the appellee and order that the mandate be remitted to the lower court.

San Juan, Puerto Rico, November 4, 1941.

RAFAEL RIVERA ZAYAS,
GABRIEL DE LA HABA,
DAMIAN MONSERRAT, JR.,
by GABRIEL DE LA HABA,
Counsel for Petitioner-Appellant.

Copy of this motion in opposition received this fourth day of November, 1941.

F. FERNANDEZ CUYAR,
Counsel for the Respondent-Appellee.

[Same Title.]

[Received in open court on November, I mean, December 1, 1941, at 2:00 P.M. (Initialed) J.L.C. Secretary.]

ADDITIONAL GROUNDS OF OPPOSITION OF THE APPELLANT TO THE MOTION TO STAY THE EXECUTION OF THE JUDGMENT.

Now comes the petitioner before this Honorable Court by his undersigned attorneys and respectfully states:

The appellee bases all its arguments on the following premise:

That the statute creating the office of city manager of the capital does not fix any tenure to the same.

The sections of Act No. 99 of 1931, relative to the office of city manager of the capital and to the duration of its term are the following:

"Section 21. The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct.

"Section 22. The City Manager may be removed by the Board of Commissioners, for just cause, upon hearing and an opportunity to defend himself either in person or through attorneys. The following shall be causes for the removal of the City Manager: Any act of his constituting a felony; any act of his constituting a misdemeanor and implying moral turpitude; or carelessness, inexcusable negligence in the performance of his duties, or immoral or incorrect conduct in the exercise thereof."

It is obvious from a reading of these two sections that Act No. 99 fixes a term for the exercise of the office of city manager of the capital and this term is during good conduct on the part of the incumbent.

The word "term" and the duration of an office are defined in 43 C.J., pages 641, 642, as follows:

"Term of Office. (a) Definition. 'Term of office' is a phrase used to prescribe the period of time during which one regularly chosen by election or appointment and inducted into an office is entitled to hold the same, perform its functions, and enjoy its privileges and emoluments."

"Duration (1) In General. The phrase 'term of office' is usually understood to apply to a fixed and certain term established by law for the performance of certain official duties. But although the phrase does not mean the term of actual service, it may be used with reference to a period uncertain in its duration depending upon the performance of the

duties prescribed, upon the favor of the appointing power, or upon a recall provision in the charter."

A reading of the cases and comments which we submit to the consideration of this Honorable Court immediately following will clearly show that the construction given by the courts of the United States upholds our contention that an office to be held during good conduct has a term fixed by the statutes.

It is worth noticing that when courts refer to an office to be held during good conduct they always refer to the term by means of the following phrases: "for a term to continue during good behavior"; "term of an office during good behaviour"; for a longer term than during good behavior"; "tenure of office upon good behavior".

"The city of Trenton had an ordinance in the year 1860 which provided for appointment of Police officials during good behavior.

"In 1886 the Legislature passed an Act providing 'that no person shall be removed from office or employment in the Police Department of any city, or from the police force of any city, for political reasons, or for any other cause than incapacity, misconduct, nonresidence or disobedience of just rules and regulations established or to be established.

"By ordinance of the City of Trenton of 1887, the term of the Police officials was limited to 1 year by repealing the former ordinance.

"The case went to Court on the complaint of various policemen. The Supreme Court of New Jersey said:

" 'The only question, then, is whether the ordinance of May 17th, 1887, changing the term of office from one during good behaviour to a term for one year, is in conflict with the act of the Legislature of March 23, 1886? The act expressly prohibits removal from office in the police department for political reasons, or for any cause other than incapacity, misconduct, non residence, or disobedience

to rules and regulations. The language could not be more specific or clear. The legislative purpose is unmistakable to set apart these officers as a class that shall not be affected by political changes, and to encourage them to a more careful discharge of their functions by a sense of security that they will not be displaced so long as they are faithful. Our duty ends when we interpret the law so as to give effect to legislative intention as expressed in the language of the law-maker. The relators being entitled to their offices for a term to continue during good behavior and from which they cannot be legally removed except for misconduct, the effect of the ordinance certified will be, if not arrested, to remove them by lapse of time.' *Clearly* v. *Trenton*, 50 N.J. Law 331; 13 Atl. 228."

"There is nothing in our constitution which expressly requires the legislature in creating offices to affix to them terms of definite duration. Neither is anything to be found therein which is impliedly to that effect. The only use of the word 'term' found in the constitution which can in any sense be attributable to statutory offices is in the bill of rights (Art. 1, Sec. 19), where it is provided that no office shall be created or exercised for a longer term than during good behavior. But as is apparent, this provision does not purport to require the legislature when an office is created to give to it a fixed term. All it does is to require that the tenure of office shall in no case extend beyond good behaviour, and it is equally applicable to both constitutional and statutory officers, regardless of whether the term be one of a fixed or of an indefinite duration.

"Now if a constitution contemplates that all statutory offices shall have a duration of a definite term for their occupancy and contains provisions for removal of incumbents before the expiration of such terms, it would be arguable that the legislature possessed no power to provide for a removal of an incumbent before the expiration of the term

otherwise than as the constitution provided. This is for the reason that the connotation of 'term' as applied to an office is that of a fixed and definite period (*Speed & Worthington* v. *Crawford*, 3 Metc., Ky., 207; 46 C.J. 963, citing other cases), and therefore, if the legislature attempted in creating the office to authorize the ousting of the incumbent of the term independently of the constitutional method of removal, it would be equivalent to an attempt by the legislature to provide by statute for removal of an officer from his constitutional term of office. It would be so arguable, though we do not mean to say the argument would be convincing. All we are saying is that the argument could be made.

"But no such argument is possible in this case, because as above shown the use of the word 'term' with all of its connotations is not to be found in our constitution in association with statutory offices in any sense that admits of the argument.

"The result then is that offices of statutory creation in Delaware are left in the sole discretion of the legislature in respect of the term of duration of their incumbency, unaffected by any constitutional limitation, other than this—that the legislature can in no case extend the tenure beyond good behavior. Within the limits defined by good behavior, the legislature is free to make the term of an office created by it long or short according as it sees fit in the exercise of its discretion. As there is nothing in the Delaware constitution which requires the legislature in the creation of statutory offices to prescribe fixed and definite terms for their occupancy, it must necessarily follow that no constitutional inhibition exists against the creation of such an office to be held during the pleasure of the appointing power. This is because of the familiar principle which is nowhere questioned, that in the American States, as distinguished from the Federal Government, the legislative power is as broad and ample in its omnipotence as sovereignty itself, except in so far as it

may be curtailed by constitutional restrictions express or necessarily implied.

"We are aware that in the judgment of many persons it is highly unwise for the legislature to create offices with an indefiniteness of tenure. We are not unsympathetic with that view. But it is the province of the legislature and not of the courts to pass upon matters of policy. The legislative hand is free except as the constitution restrains; and the courts are bound by a most solemn sense of responsibility to sustain the legislative will in the appropriate field of its exercise, even though in the opinion of the judges as individuals the legislature had acted in an unwise manner." *Collison* v. *State*, 119 A.L.R. 1427.

"Undoubtedly, the creation of an office is a question of political expediency; so is the qualification of the officer; and so are his duties, perquisites, punishment and the tenure by which he holds his office. By consequence, they are the subjects of legislative regulation. And as the creation, so is the continuance of the office, a question of sound discretion in the Legislature, of which a court cannot question the exercise . . . The public interest (referring to the same as reflected in the North Carolina constitution) did not require that any law should be laid down to the Legislature as to the tenure of those offices; but it was left to their discretion, as expedience might from time to time require it to be altered. It was therefore in the power of the Legislature to confer such offices for life, or during good behavior, or during pleasure, or for any term of years, determinable with life at an earlier day." *Hoke* v. *Henderson*, 15 N.C. 1, 25 Am. Dec. 677.

"Article 6, section 4, provides three methods of removing officers: (1). On 'conviction of misbehavior in office or of any infamous crime'; (2), 'at the pleasure of the' appointing power; (3) removal 'by the Governor' as specified. But

that provision must be read in connection with other provisions in the Constitution. Article 12, section 1, provides: 'All officers, whose selection is not provided for in this Constitution, shall be elected or appointed as may be directed by law.' The authority so conferred to provide for the election or appointment of other officers necessarily involves and implies legislative power to annex conditions of tenure. The Legislature may very well say that it is desirable that certain officers should be appointed but, for reasons which it deems sufficient, they should not be subjected to removal at pleasure and, if so minded, the Legislature may of course provide for such officers, the Constitution containing no provision to the contrary. When the point was passed on in *Re Milford Township Supervisors' Removal* (1927) 291 Pa. 46, 139 A. 623, 624, in dealing with this power, we said:

"'A necessary implication from this provision, and indeed, also, from the Legislature's supreme power to legislate on all subjects not constitutionally inhibited (*Likins' Petition* (No. 1), 223 Pa. 456, 72 A. 858; *Com.* v. *Reid*, 265 Pa. 328, 334, 108 A. 829), is that it had the right to provide that their election or appointment should be for a definite or an indefinite term, absolutely or conditionally, and this might be set forth in a single section, or in two or more sections, which, of course, would be construed together (*Holl* v. *Deshler*, 71 Pa. 299; *Com.* v. *Danville Bessemer Co.*, 207 Pa. 302, 308, 56 A. 871). It follows, if a fair construction of the statute, providing for their election or appointment, results in the conclusion that under it they were only intended to be conditionally elected for a specified term, that effect must be given to the legislative intent, notwithstanding the provisions of article 6, section 4, for not otherwise can they "be elected or appointed as may be directed by law."'" *Weiss* v. *Ziegler*, 112 A.L.R. 106.

"It was indicated in *People ex rel. Percival* v. *Cram* (1900) 164 N.Y. 166, 58 N.E. 112, and *People ex rel. Ray* v. *Henry* (1900) 47 App. Div. 133, 62 N.Y.S. 102, that under the New York Constitution providing: 'When the duration of any office is not provided by the Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment,' the Legislature could prescribe that the term of an office should be during good behavior, and that such officer could be removed only after a hearing or trial. However, in the Percival and Ray Cases the statute creating the offices involved failed to fix the duration thereof, and, moreover, expressly permitted the appointing authorities to remove the incumbents at pleasure.

"And in *Jarvis* v. *Waterbury* (1895) 84 Hun, 462, 32 N.Y.S. 389, where it appeared that the statute creating the commissioners of improvements of the Town of Westchester provided that the town supervisor should appoint five commissioners who should be a body corporate known as the commissioners of improvements, and that whenever a vacancy should occur through death, resignation, or refusal to act, the remaining commissioners should appoint someone to fill such vacancy,—in default of their so doing, the supervisor to fill it,—it was held that the tenure of the office of commissioner was fixed by the statute, since it created a body corporate by the appointment of five persons by the supervisor and provided for its perpetuity by the filling of vacancies, and consequently the supervisor had no power to remove such commissioners at his pleasure." Annotation, 112 A.L.R. 110.

We think it advisable to state to this Honorable Court our reasons for sustaining that the case cited by appellee, *Woolly* v. *Flock*, at page 5 of its motion, is not applicable to the case at bar because the decision rendered in said case is based on a statute of the State of New Jersey which did not fix a definite or indefinite

term of office to the mayor and because that was the reason why the Supreme Court of New Jersey held that the term of office of the relator should be construed as fixed by the statute for the life of the Board which appointed him.

> "The city of Long Branch is now governed by the Walsh Act.
>
> "Woolly was elected by the Board on May 16th, 1916. In January, 28th, 1918, Flock was chosen mayor. Woolly contended that he was chosen for the life of the Board and Flock that he was chosen *'durante bene placito'*.
>
> "Section 2 of the Walsh Act after reference to the initial election, declares that those who are elected 'shall serve as such commissioners until the third Tuesday in May of the fourth year following such election and every fourth year thereafter, etc.'
>
> "At the first meeting after their election, the said commissioners shall choose one of their number to preside at all meetings of the board of commissioners, and he shall be designated 'mayor'.
>
> "The court said: 'We are of the opinion that the relator's term was fixed by statute for the life of the Board; that is to say, for four years.'" *Woolly* v. *Flock*, 105 Atl. 489 (New Jersey).

The cases cited in appellee's motion, *Burgan* v. *Civil Service Commission*, 86 Atl. 929, and *Smith* v. *Reagan*, 23 Atl. 1012, are discussed in the text of the opinion delivered in the case of *Woolly* v. *Flock* which we have summarized above.

In conclusion, petitioner-appellant maintains that since the statute creating a special government for San Juan fixes the term of his office and as this Honorable Court has already held that the causes alleged by the appellee to remove him from said office were not sufficient and as a consequence of said decision appellant's reinstatement was decreed, the motion to stay the execution of the judgment which orders the reinstatement of the appellant

dated back to the date when he was suspended from office and pay by the appellee Board, should not be granted.

San Juan, Puerto Rico, December 1, 1941.

Respectfully submitted,

GABRIEL DE LA HABA,
RAFAEL RIVERA ZAYAS,
DAMIAN MONSERRAT, JR.,
Counsel for Appellant.

Copy of this motion received this first day of December, 1941.

Counsel for Appellee.

SENATE OF PUERTO RICO

Thirteenth Legislature Fourth Regular Session. S. B. 213

IN THE SENATE OF PUERTO RICO

March 20, 1936.

Mr. Iriarte presented the following bill (which was referred to the Committee on Insular and Municipal Government and Elections):

ACT

To Amend Sections 10, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32(a), 32(b), of Act No. 99, Approved on May 15, 1931, Entitled "An Act to Establish a Special Government for the Capital of Porto Rico, and for Other Purposes", as it Has Been Subsequently Amended, and for Other Purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1. That sections 10, 20, 21, 22, 23 24, 25, 26, 27, 28, 29, 30, 31, 32(a), 32(b), of Act No. 99 entitled "An Act to Establish a Special Government for the Capital of Porto Rico, and for other purposes", approved on May 15, 1931, as it has been subsequently amended, are hereby amended as follows:

"Section 1. That in all those sections wherein the Executive Municipal Officer is referred to as the City Manager of the Capital, said title be substituted by the title of Mayor of the Capital."

Section 2. That the Mayor of the Capital shall be elected by

popular vote in the general elections to be held in November, 1936, and every four years from then on.

Section 3. All laws or parts of laws in conflict with these provisions are hereby repealed.

Section 4. This law, by reason of its urgent and necessary nature, shall take effect immediately after its approval.

I Yldefonso Sola Morales, Secretary of the Senate of Puerto Rico, Certify:

That the foregoing is a true and faithful copy of the original of Senate Bill 213 filed in the archives of the Senate of Puerto Rico, intrusted to my custody.

And to be delivered to Dr. Carlos M. de Castro, I issue, sign and seal the present copy in my office on this the third day of November of the year Nineteen Hundred and Forty-one.

(Sgd.) YLDEFONSO SOLA MORALES,
Secretary of the Senate.

There is affixed a cancelled internal revenue stamp serial number A0609708, for the amount of one dollar.

SENATE OF PUERTO RICO

Fourteenth Legislature First Regular Session. S. B. 20

IN THE SENATE OF PUERTO RICO

February 10, 1937.

Mr. Iriarte presented the following bill (which was referred to the Committee on Insular and Municipal Government and Elections).

ACT

To Amend Sections 10, 20, 21, 22, 23, 24 25, 26, 27, 28, 29, 30, 31, 32(a) 32(b), of Act No. 99, Approved on May 15, 1931, Entitled "An Act to Establish a Special Government for the Capital of Porto Rico, and for Other Purposes", as it Has Been Subsequently Amended, and for Other Purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1. That sections 10, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32(a), 32(b), of Act No. 99 entitled "An Act to Establish a Special Government for the Capital of Porto Rico, and for other purposes", approved on May 15, 1931, as it has been subsequently amended, are hereby amended as follows:

"Section 1. That in all those sections wherein the Executive Municipal Officer is referred to as the City Manager of the Capital, said title be substituted by the title of Mayor of the Capital."

Section 2. That the Mayor of the Capital shall be elected by popular vote in the general elections to be held in November, 1940, and every four years from then on.

Section 3. All laws or parts of laws in conflict with these provisions are hereby repealed.

Section 4. This law, by reason of its urgent and necessary nature, shall take effect immediately after its approval.

I, Yldefonso Sola Morales, Secretary of the Senate of Puerto Rico, Certify:

That the foregoing is a true and faithful copy of the original of Senate Bill 20 filed in the archives of the Senate of Puerto Rico, intrusted to my custody.

And to be delivered to Dr. Carlos M. de Castro, I issue, sign and seal the present copy in my office on this the third day of November of the year Nineteen Hundred and Forty-one.

YLDEFONSO SOLA MORALES,
Secretary of the Senate.

There is affixed a cancelled internal revenue stamp serial number A0609707, for the amount of one dollar.

[Title omitted.]

OPINION OF THE COURT.

DELIVERED BY MR. JUSTICE DE JESUS.

San Juan, Puerto Rico, January 14, 1942.

On April 11, 1939, Dr. Carlos M. de Castro filed a petition for certiorari in the District Court of San Juan, requesting the review

and annulment of a certain resolution adopted by the Board of Commissioners of San Juan on the fifth day of that same month and year, dated back to January 7, 1939, whereby he was removed from the office of city manager of the Capital, to which position he had been appointed by said Board on January 4, 1937. The petition was denied by judgment rendered on August 21, 1939, and the petitioner resorted to this court, the judgment appealed from being reversed on June 28, 1940, and in its stead another was rendered whose dispositive part insofar as pertinent reads as follows:

> ". . . and in its stead a new one rendered, annulling Ordinances No. 370 of January 5, 1939, and No. 373, of April 5, 1939, which decreed the suspension and removal of the city manager, and in consequence thereof ordering the reinstatement of the petitioner Carlos M. de Castro in his office of City Manager, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay." 57 P.R.R. 149, 159.

Feeling aggrieved, the Board of Commissioners appealed to the United States Circuit Court of Appeals for the First Circuit, which affirmed the judgment of this court on October 20, 1941, and the Supreme Court of the United States denied the petition for certiorari filed by the Board of Commissioners to review the last mentioned judgment.

After the mandate had been returned to this court, the Board of Commissioners, on October 27, 1941, filed a lengthy motion in this court, duly notified to counsel for petitioner-appellant, praying that we stay the execution of our judgment of June 28, 1940, insofar as it decrees the reinstatement of the petitioner Carlos M. de Castro in the office of city manager of the capital because the term for which he was appointed had elapsed since January, (*sic*) 1941. Petitioner objected by motion filed on the 4th of November last, and the matter was finally submitted after a hearing held for that purpose on the first day of last month.

In opposition to the contention of the Board of Commissioners, the petitioner Dr. de Castro holds that the office of city manager of the capital is for life during good behavior; that the issues raised by the appellee Board in relation to the tenure of office of the city manager of the capital were adjudged by this court in its judgment rendered on June 28, 1940, which is final and executory; and finally, that we lack jurisdiction to stay the execution of a final judgment in regard to a matter which has the authority of *res judicata.*

Contrary to what is sustained by counsel for petitioner Dr. de Castro, the judgment of this court of June 28, 1940, made no finding whatsoever nor even mentioned in the opinion attached thereto the duration of the term of office of the city manager of the capital. It could not have been otherwise since that question was not nor could have been in issue, since as Dr. de Castro was appointed on January 4, 1937, at the time of the hearing on the certiorari filed by him in the District Court of San Juan, when that court rendered its judgment of August 21, 1939, and when that of this court was rendered on June 28, 1940, the term of four years for which, as held by the Board of Commissioners, he had been appointed, had not expired. The sole question adjudged within said proceedings was the charges brought against petitioner and nothing else. Consequently, the matter now before us does not have the authority of *res judicata.*

Neither in his pleading in opposition nor in the memorandum afterwards filed by him on the first of last month does petitioner allege any legal ground to uphold his contention that this court lacks jurisdiction to pass upon and decide this controversy.

The judgment whose execution is in issue was rendered by this court instead of the one rendered by the District Court of San Juan and the question now raised by the Board involves an incident in relation to the execution of that judgment in the light of facts and circumstances which took place after the date when it was rendered. Then, as we have seen, the term of four years for which petitioner was appointed, as sustained by the Board, had

not expired, but now, when it is sought to execute said judgment, it is alleged that the term has elapsed. If we should decide in fact that the term for which he was appointed expired last year, or to be more specific, on the second Monday of February, 1941, (section 50 of Act No. 99 of 1931, amended by Act No. 10 of 1937, page 131), would it not be contrary to the statute and to justice that, availing himself of the terms of that judgment, petitioner should be reinstated in an office to which he has no right? For such eventuality, the law, which does not conceive an evil without a remedy, confers on this court the authority to grant it, providing in section 7, subdivision 8 of the Code of Civil Procedure that every court has power to control its process and orders so as to make them conformable to law and justice. See by analogy *McAuliffe* v. *Coughlin,* 105 Cal. 268; *Rowe* v. *Blake,* 112 Cal. 637, 643.

Having decided the preceding questions, the time has come to consider and decide the one relative to the term of office of the city manager of the capital.

Although the National Constitution does not forbid it, the only offices with a life tenure in the federal government are those of judges. The Constitution provided it thus to safeguard the independence of the national judiciary. The other federal offices wherein that necessity does not concur, do not enjoy that privilege. Therefor, the life tenure is the exception and hence the rule of construction universally accepted which provides that the tenure of an office shall not be understood to be for life unless the intention of the legislature to that effect appears to be so evident as to permit of no doubt. If there should be doubt, it shall be understood that the term of the office will be the shortest within a reasonable interpretation.

Petitioner's contention is predicated fundamentally on section 21 of the already cited Act No. 99 of 1931 (page 626) which copied literally reads as follows:

> "Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of

Commissioners created by this Act and *shall hold office during good conduct.*" (Italics ours.)

In the case of *Shurtleff* v. *United States,* 189 U.S. 311, cited by counsel for the Board of Commissioners, a federal statute was construed whose section 12 reads as follows:

> "Sec. 12. That there shall be appointed by the President, by and with the advice and consent of the Senate, nine general appraisers of merchandise, each of whom shall receive a salary of seven thousand dollars a year. Not more than five of such general appraisers shall be appointed from the same political party. They shall not be engaged in any other business, avocation, or employment, *and may be removed from office at any time by the President for inefficiency, neglect of duty, or malfeasance in office . . .*" (p. 313) (Italics ours.)

Shurtleff had been appointed for one of said offices on July 17, 1890, and continued to hold the same until May 3, 1899, when, without having previously brought charges against him, President McKinley sent him a communication removing him from office, to take effect upon the appointment and qualification of his successor. Shurtleff alleged that inasmuch as the statute specified certain causes for which the officer might be removed, it thereby impliedly excluded the right to remove for any cause other than those specified in the law, and he invoked, by way of illustration, the maxim *expressio unius est exclusio alterius.*

The Supreme Court of the United States, upholding the action taken by the President, expressed itself thus:

> "We are of opinion that as thus used the maxim does not justify the contention of the appellant. We regard it as inapplicable to the facts herein. The right of removal would exist if the statute had not contained a word upon the subject. It does not exist by virtue of the grant, but it inheres in the right to appoint, unless limited by Constitution or statute. It requires plain language to take it away. Did

Congress by the use of language providing for removal for certain causes thereby provide that the right could only be exercised in the specified causes? If so, see what a difference in the tenure of office is effected as to this office, from that existing generally in this country. The tenure of the judicial officers of the United States is provided for by the Constitution, but with that exception no civil officer has ever held office by a life tenure since the foundation of the government. Even judges of the territorial courts may be removed by the President. (Citation) To construe the statute as contended for by appellant is to give an appraiser of merchandise the right to hold that office during his life or until he shall be found guilty of some act specified in the statute. If this be true, a complete revolution in the general tenure of office is effected, by implication, with regard to this particular office. We think it quite inadmissible to attribute an intention on the part of Congress to make such an extraordinary change in the usual rule governing the tenure of office, and one which is to be applied to this particular office only, without stating such intention in plain and explicit language, instead of leaving it to be implied from doubtful inferences. The rule which is expressed in the maxim is a very proper one and founded upon justifiable reasoning in many instances, but should not be accorded controlling weight when to do so would involve the alteration of the universal practice of the government for over a century and the consequent curtailment of the powers of the executive in such an unusual manner." (p. 316.)

Further on, in the course of its opinion, the court repeats:

"We cannot bring ourselves to the belief that Congress ever intended this result while omitting to use language which would put that intention beyond doubt." (p. 318.)

If we construe section 21, *supra*, in relation to the other provisions of the statute, especially section 39, as is advised by the

canons of legal construction, the doubt becomes stronger in regard to the intention of the legislator. In its pertinent part, said legal precept reads as follows:

> "All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. *Said employees shall be appointed for the term for which each officer is appointed.* The employees of the Capital may be removed for just cause by the officer appointing them, after a hearing and an opportunity to defend themselves. . . ." (Italics ours.)

If we were to hold that the tenure of the office of city manager of the capital is for life then we would confront ourselves with the following anomalies:

(1) The treasurer of the capital, the director of public works, the director of health and charities, the school director and the secretary of the capital, who, according to section 26 must be appointed by the city manager of the capital, might be appointed for a limited term to be fixed by the city manager, while the employees attached to the office of the city manager of the capital, let us say, for example, the messenger of his office, by the mere fact of being appointed by the city manager would hold his employment for life unless removed for just cause.

It could not have been the intention of the legislator to establish such an absurd difference between the tenure of office of an employee and that of officers as important as those enumerated in section 26, *supra.*

(2) An uncalled for discrimination would be created between the employees appointed by the officers of the Government of the capital and the employees appointed by the city manager, as the former would hold their employments during the tenure of the appointing officer while the term of office of the employees appointed by the city manager would be for life.

In the case of *Smith* v. *Bryan,* 40 S.E. 652, 654, it was said by the Supreme Court of Appeals of Virginia:

"It is a rule of construction that, if a statute is of doubtful import, a court will consider the construction put upon the act when it first came into operation, and that construction, after lapse of time, without change either by the legislature or judicial decision, will be regarded as the correct construction. Suth. St. Const. Sec. 307; *Anable* v. *Com.*, 24 Grat. 563–566; *Lewis* v. *Whittle*, 77 Va. 415, 422; *Mangus* v. *McClelland*, 93 Va. 786, 789, 22 S.E. 364.

"So, also, the practical construction given to a statute by public officials and acted upon by the people, is not only to be considered, but in cases of doubt will be regarded as decisive. It is allowed the same effect as a course of judicial decision. The legislature is presumed to be cognizant of such construction, and, when long continued, in the absence of legislation evincing a dissent, the courts will adopt that construction.

". . . . . .

"Plaintiff in error accepted his appointment presumably with knowledge of the limitations affixed to his tenure by the construction referred to. He therefore took subject to that construction, and cannot now be permitted to insist upon a different construction."

In our opinion, it is not a matter beyond all doubt that it was the legislative intent to make the office of city manager one for life, and in the face of this doubt it is proper, in accordance with the trend of decisions, to choose the shortest tenure, that of four years, which is the one of the majority, at least, of the Board of Commissioners which appointed him.

It is said to this effect by a well known author:

"Where the legal provision prescribing the term is uncertain or doubtful, an interpretation will be adopted which limits the term to the shortest time." McQuillin, Municipal Corporations, 2nd ed. 1939, vol. 2, p. 219.

See on this point the annotation in 135 A.L.R. 1173, 1175, and

the cases of *Aggeler* v. *Dominguez*, (1933), 217 Cal. 429, 19 P. (2d) 241; *Lowrie* v. *Brennan*, (1937), 283 Mich. 63, 276 N.W. 900; *Chamski* v. *Cowan*, (1939), 288 Mich. 238, 284 N.W. 711; *Dobkins* v. *Reece*, (1929, Tex. Civ. App.), 17 S.W. (2d) 81.

The political parties of this Island have always construed this statute in the sense that the tenure of office of the city manager of the capital is that of four years, and since its section 50 was amended in 1937, it is on the second Monday of February of the year following each general elections when the Board of Commissioners appoints him. Courts take judicial notice of that which constitutes common knowledge, and it is of common knowledge, at least among the inhabitants of this city and particularly among the voters, who have been the candidates of the different political parties for the office of city manager of the capital in the last two general elections. See in regard to judicial notice, 9 Wigmore on Evidence (Third Edition, 1940), section 2571, page 548; *City of Birmingham* v. *Martin*, 153 So. 235; *Byrne* v. *Scipio et al.* (N.J., 1937), 19 Atl. 444. Consequently, we take judicial notice that petitioner was a candidate for the office of city manager of the capital for the coalition of the "Union-Republicana" and "Socialista" parties, in the general elections held in 1936, Dr. M. Pavia Fernandez being his opponent at the time for the "Liberal Puertorriqueno" party. Likewise, it is a matter of common knowledge in this city that in the general elections held in 1940, the candidate for that same office for the coalition of the "Union-Republicana" and "Socialist" parties was Mr. Fernando Geigel; for the "Popular Democratico" party, Mr. F. Benitez Rexach and for the "Unificacion Puertorriquena Tripartita" party, Mr. R. Ramos Cobian, and that the first of said parties having won the last held elections, the Board of Commissioners appointed Mr. Geigel city manager of the capital.

It is true, as contended by petitioner, that the office of city manager of the capital does not appear in the electoral ticket corresponding to the capital of Puerto Rico. Neither does the candidacy of the President of the United States appear in the

electoral ticket in the general elections and yet it is known that the candidate nominated in the convention of the party which wins the general elections will be the President of the United States.

We deem it appropriate now to state, and we have taken judicial notice of it, that petitioner appeared in the electoral ticket of the "Unificacion Puertorriquena Tripartita" party as a candidate for the office of member of the House of Representatives, for the precinct of Santurce, in the last general elections, and this took place several months after the judgment of this court had been rendered whereby the reinstatement of petitioner in the office of city manager of the capital was ordered. This action of petitioner is in harmony with the interpretation to which we have referred lately and tends to show his conviction that he would not be able to continue holding the office of city manager of the capital once the term of four years which would elapse on the second Monday of February, 1941, had expired.

If that has been the interpretation placed on said statute by the different political parties, by the public in general and petitioner himself, it seems evident that the interpretation suggested by petitioner is very doubtful, to say the least, and that being so, we must decide that the tenure of office of the city manager of the capital is that of four years, provided that during the same he observe good behavior.

The Board, as well as appellant, cite different cases in support of their respective contentions, which we do not intend to discuss in order not to extend unnecessarily this opinion. Yet, we have examined these cases and none is strictly applicable to the case at bar, since they construe statutes which although similar, are not equal to the one herein involved, and it is known that a slight discrepancy between two statutes frequently gives rise to constructions which are completely antagonistic. That is why in this case we have followed what we deem to be the best practice in construing a statute, that is, without ignoring the construction placed on other similar ones, to carefully study it in its different

provisions, harmonizing the ones with the others so as to find out, from their text, the actual purpose of the legislator.

For the foregoing reasons, the motion of the Board of Commissioners of San Juan, filed on October 27, 1941, is granted, and in consequence thereof the execution of the judgment of this court, rendered on June 28, 1940, is stayed insofar as it decrees the reinstatement of petitioner Dr. Carlos M. de Castro in the office of city manager of the capital for the reason that the term for which he was appointed expired in February, 1941.

A. R. DE JESUS,
Associate Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

JUDGMENT.

San Juan, Puerto Rico, January 14, 1942.

For the reasons set forth in the foregoing opinion, the motion filed by the Board of Commissioners of San Juan on October 27, 1941, is granted, and in consequence thereof the execution of the judgment of this court of June 28, 1940, is stayed insofar as it decrees the reinstatement of petitioner Dr. Carlos M. de Castro in the office of city manager of the capital because the term for which he was appointed expired in February, 1941.

It was so ordered by the court as witness the signature of the Chief Justice. Mr. Justice Todd, Jr. took no part in the decision of this case.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

MOTION FOR RECONSIDERATION.

[Received January 29, 1942. 2:25 P.M. Supreme Court of Puerto Rico.]

Now comes the petitioner appellant by his undersigned attorneys and respectfully states:

That on January 14, 1942, this Honorable Court rendered a judgment based on the grounds stated in the opinion attached thereto, by virtue of which the judgment of this court of June 28, 1940 (*De Castro* v. *Board of Commissioners*, 57 P.R.R. 149), was amended insofar as it dealt with the duration of the term of office of the city manager of the capital and his right to the reinstatement ordered in the aforementioned judgment.

Petitioner appellant respectfully prays this Honorable Court to reconsider its judgment of January 14, 1942, on the following grounds:

1. Said judgment is in conflict with what appears from the record in relation to the construction of section 21 of Act No. 99 of May, 1931, to establish a special government for the Capital of Puerto Rico, which fixes the duration of the term of office of the city manager of the capital, and for such reason, it amends and fundamentally upsets a status of *res judicata*.

2. The aforementioned judgment of January 14, 1942, is null and ineffective inasmuch as it:

(a) Amends the judgment of June 28, 1940, in a material and essential part, after the term of the court during which it was rendered had expired, after said judgment had been appealed from to and affirmed by the United States Circuit Court of Appeals for the First Circuit and this decision reaffirmed by the denial of the petition for certiorari filed in the Supreme Court of the United States.

(b) Deprives petitioner appellant of a property right without the due process of law since an issue in law is adjudged against

him without having given the appellant an opportunity to offer evidence in regard to matters of fact.

(c) Amends the final judgment of the United States Circuit Court of Appeals for the First Circuit which affirmed in all of its parts the one rendered by this Honorable Court on June 28, 1940, when the latter court no longer had jurisdiction over the parties nor over the subject matter of the action, exception made of its ministerial duty of returning the mandate of the affirmed judgment to the District Court of San Juan.

3. Because this Honorable Court has given to the case of *Shurtleff* v. *United States*, 189 U.S. 311, a scope and an application which it does not have in relation to the case at bar, since that case had to do with a public office which had no definite tenure fixed by the statute and the statements of the Supreme Court in relation to the possible life tenure of the office were mere *obiter dicta*.

Before stating our arguments in support of the different issues raised in this motion, we think it convenient to make a chronological narration of the history of this case.

On June 28, 1940, this Honorable Court rendered judgment reversing the judgment appealed from the District Court of San Juan. (*De Castro* v. *Board of Commissioners*, 57 P.R.R. 149.)

This judgment was notified to the appellee which, on July 13, 1940, filed two petitions in this court, one for reconsideration of the judgment and the other requesting its nullity. Both petitions were argued at length, citing numerous judicial decisions. In neither of these motions did the appellee request the amendment or correction of the judgment of June 28, 1940, in relation to the construction of section 21 of the law creating a special government for San Juan and the duration of the term of office of the city manager of the capital. Both motions were denied by this Honorable Supreme Court.

On July 17, 1940, the respondent appealed to the United States Circuit Court of Appeals for the First Circuit, and on July 30,

1940, this court approved a supersedeas bond for the amount of $12,000.

On January 10, 1941, the United States Circuit Court of Appeals for the First Circuit affirmed the judgment of this Honorable Court. (Board of Commissioners *v.* De Castro, No. 3643, October Term, 1940.)

On February 10, 1941, the reconsideration of the judgment was denied and on February 24, 1941, the Circuit Court ordered the increase of the supersedeas bond in 6,000 additional dollars, leaving the approval of the same to this Honorable Court. In the assignment of errors and in the statement of appeal before the United States Circuit Court of Appeals for the First Circuit, the party appellant did not raise any question whatsoever regarding the construction of section 21 and the duration of the term of office of the city manager of the capital notwithstanding that at the time of its appeal, the date when it is now alleged that the term of office of the city manager expired, was six months away.

On May 13, 1941, the respondent applied for a writ of certiorari in the Supreme Court of the United States. Neither did it adduce in its petition any argument in relation to the construction of section 21 or in relation to the duration of the term of office of the city manager and this, notwithstanding the fact that on that date, according to respondent's theory, the tenure of office of the city manager had already expired.

On October 13, 1941, the certiorari was denied by the Supreme Court of the United States and the mandate remitted to the United States Circuit Court of Appeals, which in turn, remitted its mandate to this Honorable Court on October 20, 1941.

On October 27, 1941, the respondent appellee filed the motion which was the object of the judgment rendered by this court on January 14, 1942.

In order to simplify matters and for a better understanding of our contentions, we shall argue them according to the numerical order which we have assigned them.

CONTENTION NUMBER 1.

The controversy in this case had to do at all times, since the commencement of the action in the District Court of San Juan, with the scope and construction of sections 21 and 22 of Act No. 99 of 1931 (Laws of 1931, page 626).

Although it is true that this Honorable Court in its judgment of June 28, 1940, made no special finding in relation to the duration of the term of office of the city manager, it implicitly upheld his right to hold such office during good behavior, when it held that the causes for removal were not the causes provided by law.

In the course of the whole resolution whereby the city manager of the capital was removed from office, it is dealt with the good conduct provided by section 21 of the statute, and because the Board found that the city manager had not observed such good conduct it removed him from office. (Transcript of Record, pages 5, 6 and 7.)

In the brief filed by appellant the construction of the phrase "during good conduct" found in section 21 of the "Act to Establish a Special Government for the Capital of Puerto Rico", was considered.

> "We must carefully bear in mind in considering whether the City Manager of the Capital was granted all the means of adequate defense and whether the due process of law was observed, that he is an officer who, although not elected by popular vote, has an indefinite term of office which may be considered for life, since the phrase 'during good conduct', found in section 21 of the act establishing a special government for the Capital, makes his office one for life and not one for a fixed term.
>
> "'An official tenure during good behavior is for life unless sooner terminated for cause. And removal for cause implies a right to be heard and a trial in some form of procedure or other.' *Smith* v. *Bryan,* 100 Va. 199, 40 S.E. 652."

See appellant's brief, pages 33 and 34.

In the motion to quash the writ of certiorari issued by the lower court, there was also raised before said court the question regarding the construction of section 21 of the act creating a special government for San Juan. (See Transcript of Record, pages 19, 24 and 38.)

In the motion to quash the writ (page 29 of the Transcript of the Record), the respondent appellee cited the case of *Shurtleff* v. *United States,* 189 U.S. 311, as well as the case cited by petitioner appellant, *Ex parte Hennen,* 13 Peters 230.

In the brief filed by respondent appellee, pages 7, 14, 19, 28 and 29, section 21 of the law and the duration of the term of office of the city manager of the Capital were discussed. The pertinent parts discussed in appellee's brief, whose pages we have already cited, read as follows:

> "The office of City Manager of the Capital is a highly privileged one and the person who holds it in accordance with the letter and spirit of the municipal statute is responsible solely and exclusively to the power which appointed him, that is, to the Board of Commissioners of the Capital.
>
> "When the lawmaker, besides conditioning the tenure of the City Manager on good behavior. . . .
>
> "Besides, we sustain that when the legislator said in section 21 of Act No. 99 of 1931 that the City Manager of the Capital would hold his office during good conduct, and it is a section so independent from section 22 that we can assure that the office of City Manager of the Capital is at the discretion of the Board of Commissioners, the appointing power, which could and may remove him when in its opinion the City Manager should fail to observe the good conduct which in the judgment of said Board he should observe.
>
> "(a) Because Act No. 99 of 1931, which governs the destinies of the administration of the Capital of Puerto Rico, reads as follows in its section 21, page 638; 'The City Manager shall be the chief executive of the Capital; he shall be

appointed by the Board of Commissioners created by this Act and *shall hold office during good conduct.'*

"Section 21 of Act No. 99 of 1931 stands by itself and independently from and has nothing to do with section 22 of the same statute. The City Manager is the creation of the appointing power, Board of Commissioners of San Juan, holds that office at the will of the Board, until this Body, which constitutes the Government of San Juan and which is responsible before public opinion, should arrive at the conclusion that the City Manager of the Capital has failed to observe good conduct.

"Section 22, independent of and different from section 21, even in its wording, apart from the good conduct established in section 21 and as an addition to the causes for removal of the City Manager of the Capital, adds, after prescribing the procedure, the following additional causes for the removal of the mayor, that is, the following:

"As it will be seen, the City Manager of the Capital is the only officer in Puerto Rico who retains, independently from the appointing power, his office during good behavior. That is, the tenure of his office is not limited and he holds the same until the time when the appointing Board should be of the opinion that he has failed to observe good conduct or that he has performed, in addition to and independently from the good behavior, any of the acts specified in section 22 of the same statute. On this point we cite to the Court the following decisions:

" 'It is a well established rule of law that the power to appoint to an office or position, where the term or tenure is not defined, carries with it the power of removal. The Supreme Court of the United States in an early case, which has only been followed, said: "All offices, the tenure of which is not fixed by the constitution or limited by law, must be held (1) either during good behavior, or (which is the same thing in contemplation of law) during the life of

the incumbent; or (2) must be held at the will and discretion of some department of the government, and subject to removal at pleasure. It cannot, for a moment, be admitted that it was the intention of the Constitution, that ıese offices that are denominated inferior offices, should : held during life. And if removable, by whom is such removal to be made. In the absence of all constitutional provision, or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment. *Ex parte Hennen*, 13 Peters (38 U.S.) 230, 259, 10 L. ed. 138, followed *In Re Eaves*, 30 Fed. 21, 23; *In re Commissioners of Circuit Court*, 65 Fed. 314, 318; see *Todd* v. *U. S.*, 158 U.S. 278, 282, 15 Sup. Ct. 889, 39 L. ed. 982; *U.S.* v. *Allred*, 155 U.S. 591, 594, 15 Sup. Ct. 231, 39 L. ed. 273; *Parsons* v. *U. S.*, 167 U.S. 324, 331, 17 Sup. Ct. 880, 42 L. ed. 185; *U.S.* v. *Perkins*, 116 U.S. 483, 16 Sup. Ct. 1073, 41 L. ed. 287, affirming 20 Ct. of Cl. 438; *Blake* v. *U.S.*, 103 U.S. 227, 231, 26 L. ed. 462; *Ex parte Wall*, 107 U.S. 265, 2 Sup. Ct. 569, 27 L. ed. 552." ' "

In view of the foregoing this court will see that the matter regarding the tenure of office of the city manager was raised and fully discussed before this court and it is presumed that it was taken into account when its judgment of June 28, 1940, was rendered, but even if it should not have been the object of a specific judicial decision, the question was submitted and is considered *res judicata*.

"*Res judicata* may be pleaded as bar, not only as respects matters actually presented to sustain or defeat the rights asserted in the earlier proceeding, but also as respects any other available matter which might have been presented to that end." *Chicot County* v. *Baxter State Bank*, 308 U.S. 371; *Grub* v. *Public Utilities Commission*, 281 U.S. 470; see 15 Cal. Jur., section 193, p. 142; section 195, p. 146; section 206, p. 162.

CONTENTION NUMBER II. (a) (b) (c).

The judgment of January 14, 1942, was based on the faculty which, according to the court's view, is conferred upon it by subdivision 8 of section 7 of the Code of Civil Procedure, which determines that every court has power to control its process and orders so as to make them conformable to law and justice.

The above cited section is equivalent to section 128 of the Code of Civil Procedure of California.

Section 128, subdivision 8 of California reads as follows:

"Every court shall have power:

"

"8. To amend and control its process and orders so as to make them conformable to law and justice."

It is our opinion that there exists an important difference of construction of the word "process" when the same is translated into Spanish as "*providencia*". But notwithstanding this, the scope of said legal provision does not warrant any court to vacate or amend its judgments in such a way, once they have been registered in the judgment-book that such amendments involve, not the correction of an error but a material variation which completely changes the rights of the parties, adjudged and determined by the amended judgment.

See Fairall's Code of Civil Procedure of California, Part I, Section 128, page 79, and the annotation and judicial decisions cited in relation to subdivision 8.

It is a universal and invariable doctrine that once a judgment is registered it cannot be amended except in the manner provided for in the Code and for the causes and reasons established in the same.

The Code of Civil Procedure of Puerto Rico includes section 140, equivalent to section 473 of the Code of Civil Procedure of California, which provides the reasons and the manner in which a court may exempt a person from the effects of a judgment, order or other proceeding. Said section provides that the petition for

that purpose must be filed within a reasonable period which shall not exceed six months from the expiration of the judicial term.

The Supreme Court of Puerto Rico rendered its judgment of June 28, 1940, during the term of May, 1940, which term lasted for six weeks counted from the third Monday of May, in accordance with the provisions of section 4 of the "Act Fixing the Terms of the Supreme Court of Puerto Rico", approved on March 1, 1902, Code of Civil Procedure of Puerto Rico, page 289. The respondent appellee had until the end of December, 1940, to request any amendment to which it might be entitled in accordance with section 140, for the reasons therein specified.

It is also a well settled rule that when a judgment is not susceptible of being amended, the only remedy available to the interested party is to move for a new trial or to appeal to a superior court.

The respondent appellee did not request any amendment based on section 140, nor did it move for a new trial, but chose to appeal its case to the Circuit Court of Boston, thus depriving the Supreme Court of Puerto Rico of jurisdiction over the same. We have already stated that when it appealed its case to the United States Circuit Court of Appeals for the First Circuit, the respondent did not raise any question regarding any alleged error committed by the Supreme Court in construing section 21 nor in relation to the duration of the term of office of the city manager of the capital, which according to said judgment had to be considered as of indefinite duration during the good conduct of the city manager, since it is thus provided by the statute and it was so provided by implication by the Supreme Court when it ordered the reinstatement of petitioner, dated back to January 8, 1939, without any restriction or limitation whatsoever, on the ground that the Board of Commissioners had not shown that the city manager had failed to observe good conduct. By logical deduction, the judgment of the Supreme Court of Puerto Rico must be construed in the sense that the city manager was entitled to be reinstated in his office and to remain in the same during good behavior since this is what

the statute provides and what was raised before the court by counsel for both parties in their briefs and oral arguments.

With the court's leave we most respectfully state that we have examined the cases of *McAuliffe* v. *Coughlin,* 105 Cal. 268, and *Rowe* v. *Blake,* 112 Cal. 637, and have failed to find that these cases are strictly applicable to the case at bar since they deal with the correction of clerical errors, and there is no doubt whatsoever that any court, at any time, has the inherent power to correct such errors.

The question raised by this party is not to deny the court its right to correct its orders and proceedings but the right to fundamentally amend a judgment, limiting or amplifying it in an essential part which affects the rights of one of the parties, acknowledged by the amended judgment, that is, the unlimited and unrestricted right of taking possession of the office from which he had been removed.

We cite immediately following numerous comments and judicial decisions strictly applicable to the case now before this Honorable Court.

See Cal. Jur., volume 14, pages 938, 991, 999, 1008 and 1018.

> "Clerical misprisions can be corrected at any time by an order of the court but judicial errors can be remedied only through a motion for a new trial or by appeal."
>
> *O'Brien* v. *O'Brien,* 124 Cal. 422.

The same doctrine had been upheld in the case of *First National Bank* v. *Dusy,* 110 Cal. 69, wherein, iting the case of *Kamp,* 59 New York 212, the following was said:

> "The jurisdiction of the court over the subject matter of the action and over the parties terminated with the entry of final judgment except to enforce the judgment and carry out its provisions."

The following cases hold that a judgment cannot be changed in any essential particular which affects the parties:

McConville v. *Sup. Ct.*, 78 Cal. App. 203, 248 Pac. 553;
Los Angeles v. *Sup. Ct.*, 94 Cal. App. 433, 271 Pac. 363;
Calkins v. *Monroe*, 17 Cal. App. 324, 119 Pac. 680.

It has been held that if a court has not rendered a judgment which it could have rendered it has no authority to remedy such error by ordering the entry of a judgment *nunc pro tunc*. *Schroeder* v. *Sup. Ct.*, 73 Cal. App. 687, 239 Pac. 65.

When a court loses its jurisdiction it cannot make any amendment.

United Railroad Co. v. *Court*, 170 Cal. 755;
Crenshaw Bros. v. *Southern Pac.*, 42 Cal. App. 44, 123 Pac. 208, 250 U.S. 669, 63 L. ed. 1198, Cert. denied.

It has been also held that a judicial decision rendered on appeal binds the lower court as well as the Supreme Court. *Re Estate of Baird*, 198 Cal. 490.

It has been held that the Code of Civil Procedure of California only contemplates a final judgment in an action and it should not be presumed that the court has adjudged a case through successive final judgments. *Los Angeles Auto Tractor Co.* v. *Sup. Ct.*, 94 Cal. App. 433, 271 Pac. 393.

The power to amend a judgment ceases as soon as the judgment becomes final. *Gillespie* v. *Andrews*, 78 Cal. App. 599, 248 Pac. 715.

The proceedings to amend should not be of a revisory or appellate character. *Stanton* v. *Sup. Ct.*, 202 Cal. 478, 261 Pac. 1001.

The case of *McConville* v. *Sup. Ct.*, 78 Cal. App. 203, 248 Pac. 553, is an example of what constitutes a readjudication of a case when a judgment is amended or altered:

> "A judgment solemnly entered after hearing cannot be annulled except upon legal grounds and following the statute which is the major of the court's jurisdiction." 14 Cal. Jur, 1018; *Molema* v. *Molema*, 103 Cal. App. 79, 283 Pac. 956.
>
> "After entry of final judgment the power to change is gone except as this may be authorized by the rules governing

amendments and the Code provisions for conforming the conclusions and judgments to the findings of fact. Any further judgment or order materially varying the judgment is a nullity, since the court is without jurisdiction." *Bank* v. *Dodson*, 127 Cal. 208; *White* v. *White*, 130 Cal. 597; *Consolidated Construction Co.* v. *Pacific Electric Railway*, 184 Cal. 244

"Proceedings for amendment of judgment should not be permitted to become revisory or appellate in their nature and ought never to be the means of modifying or enlarging the judgment or the judgment record, so that it shall express something which the court did not pronounce even though the proposed amendment embraces matter which clearly could or even should have been pronounced." *Estate of Potter*, 141 Cal. 424; *Leonis* v. *Leffingwell*, 126 Cal. 369; *Tahawa* v. *Hole*, 170 Cal. 323; *Haine Piano Co.* v. *Bloomer*, 193 Cal. 398; *First National Bank* v. *Drug*, 110 Cal. 79; *Mann* v. *Mann*, 6 Cal. App. 610, 92 Pac. 740; *Forrester* v. *Lawler*, 14 Cal. App. 170, 111 Pac. 284.

"Those matters as to which the power of amendment extends are ordinarily described as clerical errors or misprisions as distinguished from judicial errors which are not amendable." *Fay* v. *Stubenrauch*, 141 Cal. 573.

When the instant case was adjudged on June 28, 1940, this court was composed of five judges. Afterwards, two of said magistrates, Mr. Justice Wolf, who delivered the opinion in the case, and Mr. Justice Hutchison, retired from the bench. Although the judgment is the whole court's judgment, the absence of two of the concurring justices, one of them the one who delivered the opinion, who studied the case and submitted its solution to the court, necessarily has to affect the petitioner-appellant.

In view of the foregoing arguments and the judicial decisions cited, we respectfully adduce that the following propositions are logical and consequential:

1. If the duration of the office of city manager and the construction of the phrase "during good conduct", included in section 21 of the statute, were a matter submitted to this court on appeal; then, notwithstanding the absence of any special finding on this issue of law in the judgment, the matter is *res judicata*.

2. The Supreme Court could have made a special finding on said issue but this was not indispensable, since its judgment, in ordering the reinstatement of the city manager, dated back to January 5, 1939, dismissed the charges as a logical consequence and tacitly acknowledged and decided that inasmuch as the city manager observed good conduct he should not have been removed from office.

3. If the construction of section 21 of the statute relative to the duration of the office of city manager was never an issue involved in the action, then we find that the appellate court authorizes the introduction of new matter, beyond the scope of the case, and makes a special finding on a matter which was not the object of the law suit, which constitutes an extralimitation of its faculties as such appellate court. This is equivalent to assuming original jurisdiction, a faculty which the Supreme Court of Puerto Rico does not have in cases such as the one at bar.

4. The error of the appellate court in deciding, correctly or erroneously, according to proposition number one, or in failing to decide, correctly or erroneously, according to proposition number two, would clearly involve a judicial error and not a clerical error of misprision.

The action of the Supreme Court in adjudging the question raised by the respondent-appellee has as its consequence to deny petitioner-appellant of a property right without the due process of law. There was discussed in the lower, as well as in the appellate courts, the question that a public office is not a property right in the technical sense of the word but it is indeed a right protected by the courts and to deprive petitioner of the same the due pro-

cess of law most be observed at all times. The fact that in January, 1942, the court determined that the city manager of the capital ceased as such in February, 1941, has as its consequence to deprive petitioner-appellant from the collection of the fees corresponding to the office during that period which is equivalent to depriving him of a property right which he would enjoy otherwise. If the question relative to the right of the city manager to hold his office during good conduct without any limitation in regard to time was never the object of this action, then the petitioner-appellant is clearly being deprived of his property without the due process of law, since the court has decided in a summary proceeding a question of fact which was not submitted to it without furnishing the petitioner with ample opportunity to be heard in court, to offer evidence and to have his case adjudged in accordance with the norms established by the Organic Act of Puerto Rico on due process of law and the right of every citizen to have his day in court.

If the question was never submitted to the Supreme Court, we respectfully hold that this court had no authority to apply the precepts of the Law of Evidence, section 398 of the Code of Civil Procedure of 1933 (Sec. 36, Law of Evidence of Puerto Rico), since the evidence must conform to the allegation and questions submitted by the parties.

The fact of admitting evidence, of judicial notice, means that the court reopens the case concerning matters of fact without furnishing petitioner-appellant an opportunity to challenge this evidence with other pertinent proof of which he could have availed himself and which this party affirms that exists.

As the adverse party raised new questions of fact, this party, fearfully and entertaining serious doubts as to whether such action lied, submitted two documents to the consideration of the court to refute the evidence of judicial notice which the adverse party sought to have the Supreme Court accept. These two documents are the two bills presented in the Senate of Puerto Rico during two consecutive years to fix the term of four years to the office of

city manager of the capital and to change the title of this office to that of mayor.

It seems also proper to recall that the judgment of June 28, 1940, is no longer a judgment of the Supreme Court of Puerto Rico but a judgment of the United States Circuit Court of Appeals for the First Circuit, which, upon affirming the judgment appealed from, adopted the same in all of its parts and in its full scope, remitting its mandate to the lower court for its execution according to the same. If we add to this that the Supreme Court of the United States refused to issue a writ of certiorari to review the judgment of the Circuit Court, then perhaps it would be even possible to consider the judgment appealed from the appellate court of origin, as a judgment of the Supreme Court of the United States.

> "All inferior courts must yield prompt obedience to the mandate of the Supreme Court of the United States." *Re Howard,* 9 Wall. 175.

In any of the two instances, this Supreme Court lost jurisdiction to alter or amend its judgment in any essential particular which affected the interests of the parties litigant, in accordance with the following decisions of the Supreme Court of the United States. See the case of *Re Sanford Fork & Tool Co.,* 160 U.S. 256, which was subsequently affirmed by the cases of *Smith* v. *Vulcan;* 165 U.S. 518 and *Re Potts,* 166 U.S. 263.

> "When a case has been once decided by this court on appeal, and remanded to the Circuit Court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The Circuit Court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded. *Sibbald* v. *United States,* 12 Pet. 488, 492; *Texas & Pacific Railway* v.

Anderson, 149 U.S. 237. If the Circuit Court mistakes or misconstrues the decree of this court, and does not give full effect to the mandate, its action may be controlled, either upon a new appeal (if involving a sufficient amount) or by a writ of mandamus to execute the mandate of this court. *Perkins* v. *Fourniquet,* 14 How. 313, 330; *In re Washington & Georgetown Railroad,* 140 U.S. 91; *City Bank* v. *Hunter,* 152 U.S. 512; *City Bank, petitioner,* 153 U.S. 246.

". . . . . .

"The case is quite different, in this respect, from those in which the whole case, or all but a subsidiary question of accounting, had been brought to and decided by this court upon the appeal, as in the cases principally relied on by the petitioner. *Stewart* v. *Salamon,* 94 U.S. 434, and 97 U.S. 361; *Gaines* v. *Rugg,* 148 U.S. 228; *Ex Parte Dubuque & Pacific Railroad;* 1 Wall. 69; *In re Washington & Georgetown Railroad,* 140 U.S. 91.

"It must be remembered, however, that no question, once considered and decided by this court, can be re-examined at any subsequent stage of the same case. *Clark* v. *Keith,* 106 U.S. 464; *Sibbald* v. *United States,* and *Texas & Pacific Railway* v. *Anderson,* cited at the beginning of this opinion."

In addition to all the decisions which we have cited from California and the Supreme Court of the United States, in our own jurisdiction the matter referring to amendments to a duly entered judgment has been the object of decision by this Honorable Court. We refer to the case of *Marvin & Jones, Inc.,* v. *Torres et al.,* 19 P.R.R. 46. This Honorable Court categorically held that although every court has the right to rectify a clerical error at any stage of the proceedings, to correct an involuntarily omission or to conform the judgment to what appears from the record, it could not nor did it have authority to amend fundamentally a duly entered judgment rendered in a preceding term.

We respectfully contend that the above cited case is absolutely and strictly applicable to the question raised by this party con-

cerning the lack of jurisdiction on the part of the Supreme Court of Puerto Rico to amend fundamentally, in January, 1942, a judgment rendered on June 28, 1940, and it has not been shown that there exists cause, in the case at bar, to disregard those judicial decisions which follow the doctrine universally accepted by the courts of the United States.

CONTENTION NUMBER III.

We respectfully call the attention of the court to the fact that the case of *Shurtleff* v. *United States, supra,* has been given an unwarranted scope and has been wrongly cited as strictly applicable to the case at bar. The case of *Shurtleff* had only to do with the appointment of a general appraiser of merchandise under an Act of Congress which failed to provide the duration of the tenure of office. The Supreme Court of the United States held, by way of commentary, that to accept that Shurtleff had the right to hold the office during his life unless the President should prefer against him one of the charges provided by law, would be equivalent to making said office one for life, in the same level with the judicial officers created by the Constitution when the statute clearly did not provide that such had been the intention of Congress. The Supreme Court did not state that Congress had no authority to say so but that it had not expressly stated it. Now then, the Constitution of the United States, in dealing with judicial officers, does not provide a life tenure for them. It simply provides that the Justices of the Supreme Court and lower courts shall hold their offices during good behavior. It has been by judicial construction that the Supreme Court of the United States itself has established that the phrase "during good behavior" means that the tenure of the office is for life unless a removal takes place for improper conduct. See the case of *In re Hennen,* 13 Peters (38 U.S.) 230, 10 L. Ed. 138. This case was cited both by this party and the adverse party and accepted by the latter as it may be seen from the citation from its brief which we have already quoted:

"Article III.—Section 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

This court had ample opportunity to consider at length all the judicial decisions relating to appointments and to the power of removal in cases where the statute did not determine the duration of the office as well as in cases where the statute expressly established said term. We refer to the extensive opinion delivered by Mr. Justice Hutchison in the case of *Jimenez* v. *Reily*, 30 P.R.R. 582. In that case the Supreme Court cited with approval the case of *Territory* v. *Mann*, 114 Pac. 362, wherein the judgments rendered by the Supreme Court of the United States in the cases of *McAllister, Parsons* and *Shurtleff* are considered.

In conclusion, we wish to call the attention of the court to the fact that the statute which creates the special government for the capital of Puerto Rico in its section 21, cannot be the object of any construction that is not derived from its own text since it is a well known rule of construction that when the text of the law is clear there is no need for searching in other parts of the statute for matters to clarify by interpretation that which is clear and evident of itself and has been the object of judicial interpretation in other cases.

Section 388 of the Code of Civil Procedure of 1933 (section 26, Law of Evidence) provides that in the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

"There should be no construction of a statute where the

language is clear and comprehensive." *U. S.* v. *Wiltberger*, 5 Wheat. 76.

"A statute must be held to mean what the language imports. When it is clear and imperative, reasoning *ab inconvenienti* is of no avail, and there is no room for construction." *Boudinot* v. *U.S.*, 11 Wall. 616.

"Where the language of a statute is transparent and its meaning clear, there is no room for the office of construction: there should be no construction where there is nothing to construe." *Lewis* v. *U. S.*, 92 U.S. 618.

"The court is bound by plain and unambiguous language of a statute, and cannot alter the terms and thus enact instead of construe the law." *U. S.* v. *Ewing*, 184 U.S. 142.

Section 21 of Act No. 99 of 1931 is clear and conclusive. There is no room for construction.

It is possible that the sections relative to the appointment and term of office of other officers and employees of the Government of the capital are not completely clear, although we are of the opinion that if the terms of the officers are not fixed by the statute they should be construed as offices to be held at the will of the appointing power, in harmony with the run of decisions. (*Jiminez* v. *Reily*, 30 P.R.R. 582). But even so, said sections bear no relation whatsoever to section 21 and consequently, they should not be construed with the purpose of determining the legislative intent, which appears to be clear and transparent with respect to section 21.

The mission of the courts, as stated by us in our motion in opposition to the petition of the adverse party, is not to establish the legislative policy of a State but merely to enforce the statutes approved by the legislative authority. This is in harmony with the fundamental principles of our Constitutional Law which uphold the absolute independence of the executive, legislative and judicial powers. From time immemorial in the historic sequence of our Constitutional law, this principle has been firmly and invariably upheld.

"The judicial power is exercised in the decision of cases; the legislative in making general regulations by the enactment of laws. The latter acts from considerations of public policy, the former by the pleadings and evidence of the case." *Pennsylvania* v. *Wheeling Bridge Co.*, 18 How. 421, 59 U.S. 435.

For the foregoing reasons we pray this court to annul and vacate its judgment of January 14, 1942, and to remit the mandate to the lower court as ordered by the United States Circuit Court of Appeals for the First Circuit, for the fulfillment of the judgment of June 28, 1940, in accordance with the terms expounded in the same.

San Juan, Puerto Rico, January 29, 1942.

RAFAEL RIVERA ZAYAS,
DAMIAN MONSERRAT, JR.,
GABRIEL DE LA HABA,
Counsel for Petitioner-Appellant.

Copy of this motion for reconsideration received on this the twenty-ninth day of January, 1942.

F. FERNANDEZ CUYAR,
Counsel for Respondent-Appellee.

[Same title.]

ORDER.

San Juan, Puerto Rico, January 31, 1942.

[By the Court, at the proposal of Mr. Justice De Jesus.]

The foregoing motion for reconsideration is hereby denied.

It was so ordered by the court as witness the signature of the chief justice. Mr. Justice Todd, Jr. took no part in this ruling.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same title.]

NOTICE OF APPEAL.

[Received 1942, April 13, P.M. 3:31 Supreme Court of Puerto Rico.]

To the Clerk of the Supreme Court of Puerto Rico:

Carlos M. de Castro, feeling aggrieved by the judgment rendered and entered in the above cause in the Supreme Court of Puerto Rico on the fourteenth day of January, 1942, does hereby appeal from the entirety of said judgment to the United States Circuit Court of Appeals for the First Circuit.

This appeal is taken in accordance with Rules 10, 14 and 22 of the Rules of Civil Appeals promulgated by the United States Circuit Court of Appeals for the First Circuit, effective September 20, 1940.

Appellant files a cost bond in the sum of two hundred and fifty dollars ($250) and prays that the court approve the same and issue a citation directed to the appellee as provided by law.

San Juan, Puerto Rico, April 13, 1942.

GABRIEL DE LA HABA,
RAFAEL RIVERA ZAYAS,
DAMIAN MONSERRAT, JR.,
by GABRIEL DE LA HABA,
Attorneys for Appellant.

Copy of this notice of appeal received this thirteenth day of April, 1942.

F. FERNANDEZ CUYAR,
Attorneys for Appellee.

[MEMORANDUM: Cost bond in the sum of $250, American Surety Company of New York, surety, filed April 13, 1942, is here omitted. A. I. CHARRON, *Clerk*.]

[Same title.]

DESIGNATION BY APPELLANT OF PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD OF APPEAL.

[Filed April 13, 1942.]

Now comes the appellant through his undersigned attorneys and respectfully sets forth:

That on January 13, 1942, the appellant filed his notice of appeal and in order to perfect his appeal the appellant requests of the clerk of the court to include the complete record and all proceedings and evidence taken in the action upon which this appeal is based, which are the following documents appearing in the record of the above-entitled cause:

1. Judgment and opinion of Supreme Court of Puerto Rico of June 28, 1940.
2. Motion of appellee Board of Commissioners of San Juan of October 27, 1941, requesting arrest of judgment.
3. Motion of appellant of November 4, 1941, in opposition to petition of appellee.
4. Motion of appellant of December 1, 1941, of additional grounds for opposition to the petition of the appellee.
5. Certified copies of the secretary of the Senate of Puerto Rico of the two bills presented before the Senate in the years 1936 and 1937 fixing the duration of the term of office of the city manager of San Juan, filed December 9, 1941.
6. Judgment and opinion of the Supreme Court of Puerto Rico of January 14, 1942.
7. Motion to reconsider filed by the appellant on January 29, 1942.
8. Order of the Supreme Court of Puerto Rico of January 31, 1942, denying motion to reconsider.
9. Notice of appeal dated April 13, 1942.
10. Cost bond.

11. Order of the Supreme Court of Puerto Rico allowing appeal.

12. Order of Supreme Court of Puerto Rico approving cost bond.

13. Citation on appeal directed to the appellee Board of Commissioners of San Juan.

14. Designation of proceedings to be contained in the record of appeal.

Wherefore, appellant prays that the record requested be promptly filed within sixty days from the date of the notice of appeal, by the clerk of this court, with the clerk of the United States Circuit Court of Appeals for the First Circuit, all in accordance with Rules 14 and 22 of the Revised Rules of said appellate court.

San Juan, Puerto Rico, April 13, 1942.

GABRIEL DE LA HABA,
RAFAEL RIVERA ZAYAS,
DAMIAN MONSERRAT, JR.,
by GABRIEL DE LA HABA,
Attorneys for Appellant.

Service of copy of this designation of record received this thirteenth day of April, 1942.

F. FERNANDEZ CUYAR,
Attorneys for Appellee.

[MEMORANDUM: An order of enlargement of time for docketing case to July 12, 1942, is here omitted. A. I. CHARRON, *Clerk.*]

[Same title.]

CERTIFICATE OF TRANSLATION.

I, Luis F. Cuyar, law clerk of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of the

record, on appeal to the United States Circuit Court of Appeals for the First Circuit, in the case of Carlos M. de Castro, petitioner and appellant, *v.* Board of Commissioners of San Juan, defendant and appellee, Civil No. 8070.

San Juan, Puerto Rico, June 26, 1942.

LUIS F. CUYAR,
Law Clerk of the Supreme Court of Puerto Rico.

[Same title.]

CLERK'S CERTIFICATE.

I, Joaquin Lopez, Secretary-Reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office;

I further certify that the translation of said papers and proceedings has been revised by Luis F. Cuyar, law clerk of this court, as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, after duly cancelling the amount of $38.60 in Internal Revenue stamps, in the City of San Juan, Puerto Rico, this twenty-ninth day of June, 1942.

JOAQUIN LOPEZ,
Secretary-Reporter
[SEAL] *Supreme Court of Puerto Rico.*

$38.60 Internal Revenue stamps cancelled.

STATEMENT OF POINTS RELIED UPON.

[Filed September 22, 1942, by leave of Court.]

Now comes the appellant through his undersigned attorneys and respectfully sets forth such points upon which he relied on appeal and intended to be urged in support thereof:

1. That the Supreme Court of Puerto Rico was without jurisdiction to change or amend fundamentally its final judgment of June 28, 1940, and therefore, the final judgment rendered by said court on January 14, 1942, upon which this appeal has been taken is null and void for lack of jurisdiction.

2. That the appellant has been deprived of a property right without due process of law by reason of the final judgment of the Supreme Court of Puerto Rico of January 14, 1942.

3. That the question of the term of office of the appellant decided by the final judgment of the Supreme Court of Puerto Rico on January 14, 1942, upon which this appeal is taken was *res judicata* and had been previously the subject of judicial determination in these same proceedings and by final judgment of the Supreme Court of Puerto Rico of January 28, 1940.

San Juan, Puerto Rico, September 17, 1942.

Respectfully submitted,

HUGH R. FRANCIS,
GABRIEL DE LA HABA,
by GABRIEL DE LA HABA,
Attorneys for Appellant.

[fols. 71-76] Proceedings in Circuit Court of Appeals. On July 17, 1942, the following Statement on Appeal was filed by appellant:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1941.

No. 3796.

CARLOS M. DE CASTRO,
PETITIONER, APPELLANT,

v.

BOARD OF COMMISSIONERS OF SAN JUAN,
RESPONDENT, APPELLEE.

STATEMENT ON APPEAL.

[Filed in Circuit Court of Appeals July 17, 1942.]

INTRODUCTION.

The instant case is an appeal from a final judgment of the Supreme Court of Puerto Rico entered on January 14, 1942, as an incident of the final judgment of the Supreme Court of Puerto Rico of June 28, 1940, decided on appeal by this Circuit Court in the Case of Board of Commissioners of San Juan *v.* Carlos M. de Castro, No. 3643, October Term 1940.

After the case was remanded to the Supreme Court of Puerto Rico upon denial by the Supreme Court of the United States of the writ of certiorari taken by the Board of Commissioners of San Juan against the final judgment of the Circuit Court entered on January 10, 1941, and before the mandate of the Supreme Court of Puerto Rico was sent to the Court of First Instance (District Court of San Juan, Puerto Rico), the appellee Board of Commissioners of San Juan filed a motion to stay execution of the final judgment of the Supreme Court of Puerto Rico of June 28, 1940, on the grounds that the term of office of the appellant

Carlos M. de Castro had terminated on January, 1941 (typewritten transcript of record, pages 18 to 29).

The motion to stay was objected to by the appellant in the Supreme Court of Puerto Rico (typewritten transcript of record, pages 30 to 63).

On January 14, 1942, the Supreme Court of Puerto Rico entered a judgment, and, upon granting the motion of the Board of Commissioners of San Juan, ordered the stay of the execution of the judgment on the grounds that the term of office of the appellant had terminated on the second Monday of February, 1941 (typewritten transcript of record, pages 64 to 83).

The appellant filed on January 29, 1942, an extensive and elaborate motion to reconsider in which a full discussion was made of the grounds upon which the appellant based his contention that the judgment of the Supreme Court of Puerto Rico of January 14, 1942, was erroneous, null and void for lack of jurisdiction and that the same should be vacated and set aside (typewritten transcript of record, pages 84 to 118).

On January 31, 1942, the motion to reconsider was denied by the Supreme Court of Puerto Rico without opinion. No hearing was held by the court below (typewritten transcript of record, page 119).

On April 13, 1942, the appellant filed his notice of appeal and cost bond as well as the designation of the proceedings to be contained in the record of appeal which is the complete record of the incident appealed to this Honorable court (typewritten transcript of record, pages 120 to 127).

Although not appearing in the transcript of record, the appellant hereby states that the Supreme Court of Puerto Rico granted an extension of thirty days to file the record in the Circuit Court of Appeals. The term was thus extended to July 13, 1942.

Although the motion to reconsider filed by the appellant before the Supreme Court of Puerto Rico (record, pages 84 to 118) presents all the points and discussion thereof upon which this appeal is also based, nevertheless, in compliance with Rule 39 of

the revised rules of this court, the appellant files this statement on appeal setting forth briefly the grounds upon which the present appeal is based.

JURISDICTION ON THE BASIS OF AMOUNT IN CONTROVERSY

This court has jurisdiction under Section 128 of the Judicial Code as amended (28 U.S.C.A. Sect. 225) by virtue of which appeals from final judgments of the Supreme Court of Puerto Rico are allowed to the United States Circuit Court of Appeals for the First Circuit in all civil cases wherein the value in controversy, exclusive of interest and costs, exceeds five thousand dollars.

The instant case being an incident post judgment of the same case that was before this Honorable court, Board of Commissioners of San Juan *v.* Carlos M. de Castro, No. 3643, October Term 1940, there is no doubt that the amount in controversy, exclusive of interests and costs, exceeds five thousand dollars. See record on appeal in said case, pages 225 to 230 and the statement on appeal by the Board of Commissioners of San Juan appearing in said record on pages 232 to 237.

The judgment of the Supreme Court of Puerto Rico of January 14, 1942, appealed herein is a final decision upon which an appeal lies to this court under Section 128 of the Judicial Code above cited. See *Brush Electric Co.* v. *San Jose Electric Imp. Co.*, 51 Fed. 557; *Odell* v. *Batterman Co.*, 223 Fed. 292; *Eighth Avenue R. Co.* v. *Hedges*, 262 U. S. 736, 67 Law Ed. 1207.

JURISDICTION UPON THE EXISTENCE OF A SUBSTANTIAL FEDERAL QUESTION.

The jurisdiction of the court is also invoked on the basis that the appellant was deprived of property rights without due process of law, in violation of Section 2 of the Organic Law of Puerto Rico (48 U.S.C.A., Sect. 737) and of the provisions of the Fourteenth Amendment to the Constitution of the United States.

The appellant sustains that the Supreme Court of Puerto Rico was without jurisdiction to fundamentally change its final judg-

ment of June 28, 1940, by the judgment rendered on January 14, 1942, and that this amendment of its former judgment is equivalent to depriving the appellant of a property right without due process of law in as much as the appellant did not have a full and complete opportunity in a proper judicial proceeding to present his case supported by evidence on the question of the interpretation of Section 21 of Law Number 99 of May 15, 1931 (Laws of Puerto Rico 1931, p. 626). The Supreme Court of Puerto Rico based its decision on the question of the interpretation of the legislative intent with regards to said article 21 applying to that end provisions of the Law of Evidence of Puerto Rico Regarding Judicial Notice (Section 36, Law of Evidence, Section 398, Code of Civil Procedure of Puerto Rico 1933) which the appellant was unable to controvert due to the fact that said proceedings before the lower court were not opened to the introduction of evidence, and it was improper to so allow the introduction of evidence as the Supreme Court of Puerto Rico is not a court of first instance in which the parties can present evidence in support of their contentions or in opposition to the contentions of the adverse party.

The appellant in the court below called the attention of the Supreme Court to the fact that it lacked jurisdiction to stay execution of its judgment (typewritten transcript of record, page 34). The Supreme Court took cognizance of this fact (record, page 67) but decided that the petitioner had not alleged any legal ground to uphold his contention (record, page 67).

Again in his motion to reconsider the appellant presented the question of lack of jurisdiction (record, pages 85 and 86) and argued the same extensively as appears from his motion to reconsider, the grounds of which we wish to reproduce as part of this statement on appeal.

It seems clear that as the Supreme Court of Puerto Rico did not have jurisdiction to amend fundamentally its final judgment of June 28, 1940, under the mistaken concept of authority to amend clerical errors or misprisions, that the appellant, who had

the right to be reinstated in his office of city manager of San Juan, was deprived of a valuable property right, to wit: the possession and tenure of said office from and after the second Monday of February, 1941, until the day of reinstatement and the deprivation of this right constitutes an infringement of the due process clause of the Constitution of the United States and of Section 2 of the Organic Law of Puerto Rico which is a law of the Congress of the United States.

THE JUDGMENT APPEALED FROM IS INESCAPABLY WRONG OR PATENTLY ERRONEOUS.

A full and complete discussion of the merits of this contention with citations of law and authorities is contained in the motion of the appellant before the Supreme Court of Puerto Rico requesting reconsideration (record, pages 84 to 118).

The appellant can add nothing to the contentions presented before the Supreme Court of Puerto Rico by said motion to reconsider and he hereby reproduces this motion as an essential part of his statement on appeal, respectfully requesting this Honorable court to examine the motion to reconsider which clearly states the appellant's contentions.

Notwithstanding what is stated above, the appellant brings before the attention of this court the fact that in Puerto Rico, the Supreme Court of this Island specifically accepted the almost unanimous view of the authorities on the point that all courts have an inherent right to correct a clerical error or misprision at any stage of the proceedings but that they cannot, and have no jurisdiction or authority, to amend fundamentally a duly entered judgment rendered in a preceding term. This was categorically accepted by the Supreme Court of Puerto Rico in *Marvin & Jones, Inc.* v. *Torres et al.*, 19 P.R.R. 46. Notwithstanding this settled point of law, the court below, without any reason, departs from its established ruling, and in the case at bar renders a judgment which materially amends a judgment rendered over one and one half (1 1/2) years before and had been the object of an appeal

to this Honorable court and of certiorari proceedings before the Supreme Court of the United States.

That in the interpretation of Section 7, Subdivision 8 of the Code of Civil Procedure of Puerto Rico, equivalent to Section 128, Subdivision 8 of the Code of Civil Procedure of California, the Supreme Court of Puerto Rico was inescapably wrong or patently erroneous is apparent from a reading of the allegations and authorities cited by the appellant in his motion to reconsider (typewritten transcript of record, pages 97 to 104).

The appellant also contends that the Supreme Court of Puerto Rico was inescapably wrong or patently erroneous in its interpretation of the contention of the appellant that the matter presented by the Board of Commissioners of San Juan requesting stay of proceedings on execution was *res judicata.* The court below misconstrued the reasoning and extent of the case of *Shurtleff* v. *United States*, 189 U. S. 311 and as a consequence, thereof, rendered an erroneous decision by reason of the amendment of its former judgment, by which decision new matter was incorporated which had already been the object of judicial scrutiny or could have been the object of a full and complete judicial determination. This question is fully discussed, and authorities cited by the appellant in his motion to reconsider (typewritten transcript of record, pages 89 to 96).

Respectfully submitted, this second day of July, 1942, at San Juan, Puerto Rico.

RAFAEL RIVERA ZAYAS,
GABRIEL DE LA HABA,
DAMIAN MONSERRAT JR.,
by GABRIEL DE LA HABA,
Counsel for Appellant.

[fol. 77] ACKNOWLEDGMENT OF SERVICE

The undersigned as counsel for appellee Board of Commissioners of San Juan acknowledge receipt of a copy of the transcript of the record before the Supreme Court of Puerto Rico in the above-entitled matter consisting of 129 typewritten pages certified by the clerk of the Supreme Court of Puerto Rico.

Appellee's counsel also acknowledge receipt of three (3) copies of the typewritten statement on appeal filed by the appellant on this date.

San Juan, Puerto Rico, July 2, 1942.

F. Fernandez Cuyar, H. Gonzalez Blanes, by Carlos R. Davila, Counsel for Appellee.

Thereafter, to wit, on July 20, 1942, the following motion to dismiss or affirm was filed by appellee:

MOTION IN THE ALTERNATIVE TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT—Filed July 20, 1942

Comes now the Board of Commissioners of San Juan, appellee in these proceedings, through its undersigned attorneys, and respectfully moves this Court to dismiss the appeal taken herein, or, in the alternative, to affirm the judgment appealed from, inasmuch as it is manifest from the record and from the statement on appeal, filed herein, that the said judgment is neither inescapably wrong not patently erroneous, and, consequently should not be disturbed by this Court. Rule 39, Revised Rules, effective September 20, 1940.

[fol. 78] There is no Jurisdiction on the Basis of the Existence of a Federal Question

The Supreme Court of Puerto Rico through its judgment has construed Section 21 of Law No. 99 of May 15, 1931 (Laws of Puerto Rico, 1931, p. 626) as meaning that the term of office of the City Manager of San Juan is four years only, and that the occupant of such office has no right to hold it during life, as was contended for by appellant herein.

No federal statute, no treaty, no constitutional provision is involved in the construction of said Section 21 of the local statute.

Appellant, however, states that he was deprived of a valuable *property* right, to wit, the possession and tenure of office as City Manager of San Juan, and that such deprivation constitutes an infringement of the due process clause of the Constitution of the United States and of Section 2 of the Organic Law of Puerto Rico. This is manifestly an unwarranted contention. Possession and tenure of a civil office are not property rights for the protection of which the due process clause may be invoked. Taylor v. Beckham, 178 U. S. 549, 44 L. Ed. 1187, 1213. Cf. Higginbotham v. Baton Rouge, 306 U. S. 535, 83 L. Ed. 968, 972.

It is respectfully submitted that no federal question is present in this appeal, or even "lurking in the record".

The Resolution Appealed from is Not Erroneous

Appellant repeatedly insists that the judgment originally [fol. 79] rendered in this case has been fundamentally amended. This is obviously a fallacy.

The original, and the only, judgment rendered in this case has not been in any wise amended. Only a petition has been granted to stay the execution of that judgment in so far as it decrees the reinstatement of appellant into the office of City Manager, on the ground that his term expired on February, —, 1941, that is, four years after he was appointed to said office.

All derivative rights under the judgment, however, remain untouched and unaffected. Back salaries are recoverable, for instance.

It would certainly be a perversion of justice, granting that the term of office expired *after* a judgment of reinstatement, to decide that the court which rendered said judgment has no jurisdiction or power to stay the execution of the decree, thereby facilitating the induction into office of a man whose term has already expired.

It is respectfully submitted that the case at bar represents one of the typical instances wherein the controversy is exclusively one of judicial interpretation of a local statute. And it is only appropriate to state that the construction placed by the Insular Supreme Court on Section 21 of the statute, limiting the City Manager's term of office to four

years, is the only interpretation compatible with our democratic form of municipal and insular or territorial government.

[fol. 80] The appeal should be dismissed, or, in the alternative, the resolution and order of the Supreme Court of Puerto Rico should be affirmed.

Respectfully submitted this 9th day of July, 1942.

F. Fernandez Cuyar, H. Gonzalez Blanes, Attorneys for Appellee, by (S.) F. Fernandez Cuyar, Box 59, San Juan, P. R.

Receipt of a copy of the above motion is hereby acknowledged this — day of July, 1942.

Rafael Rivera Zayas, Gabriel de la Haba, Damian Monserrat, Jr., Attorneys for Appellant. By (S.) Gabriel de la Haba.

Thereafter, to wit, on August 3, 1942, the following Order of Court was entered:

ORDER OF COURT—August 3, 1942

It is ordered that appellee's motion to dismiss or affirm under Rule 39 be, and the same hereby is, denied.

By the Court, Arthur I. Charron, *Clerk*.

Thereafter, to wit, on September 22, 1942, the following Statement of Points was filed by leave of Court:

* * * * * * *

[fol. 81] Thereafter, to wit, on May 4, 1943, this cause came on to be heard, and was submitted on briefs by leave of Court to Honorable Calvert Magruder, Honorable John [fol. 82] C. Mahoney and Honorable Peter Woodbury, Circuit Judges.

Thereafter, to wit, on June 14, 1943, the following Opinion of the Court was filed:

[fol. 83] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1942

No. 3796

CARLOS M. DE CASTRO, Petitioner, Appellant,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN, Respondent, Appellee

Appeal from the Supreme Court of Puerto Rico

Before Magruder, Mahoney and Woodbury, JJ.

Hugh R. Francis, Gabriel De La Haba, for Appellant.
F. Fernández Cuyar, for Appellee.

OPINION OF THE COURT—June 14, 1943

MAGRUDER, J. On January 4, 1937, the Board of Commissioners of San Juan (the newly elected members of which took office on that day) appointed Carlos M. de Castro, appellant herein, as city manager of the Capital of Puerto Rico. Pursuant to § 22 of Act No. 99, Laws of Puerto Rico (1931) pp. 638–640, the said Board of Commissioners, after hearing upon charges, removed de Castro from office on April 5, 1939. The District Court of San Juan upheld the Board. On appeal the Supreme Court of Puerto Rico reversed the judgment of the district court and directed appellant's reinstatement. The Supreme Court's judgment which was rendered June 28, 1940, read as follows:

[fol. 84] "For the reasons set forth in the foregoing opinion, the judgment appealed from, which was rendered by the District Court of San Juan on August 21, 1939, is hereby reversed, and in its stead a new one rendered, annulling Ordinances No. 370, of January 5, 1939, and No. 373, of April 5, 1939, which decreed the suspension and removal of the city manager, and in consequence thereof, ordering the reinstatement of the petitioner Carlos M. de Castro in his office of city manager, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay."

An appeal was duly allowed, and on July 30, 1940, the court below approved a supersedeas bond. This court af-

firmed the judgment of the Supreme Court of Puerto Rico on January 10, 1941. *Board of Commissioners of San Juan* v. *de Castro*, 116 F. (2d) 806. Certiorari was denied on October 13, 1941, 314 U. S. 614.

Shortly after our mandate went down to the Supreme Court of Puerto Rico the Board, on October 27, 1941, filed in that court a motion to stay the execution of its judgment of June 28, 1940 (which we had affirmed) insofar as it ordered the reinstatement of appellant, on the ground that meanwhile appellant's term of office as city manager had expired.

Appellant filed an opposition to this motion, and after a hearing thereon, the Supreme Court of Puerto Rico on January 14, 1942, entered its judgment, from which the present appeal is taken, reading as follows:

"For the reasons set forth in the foregoing opinion, the motion filed by the Board of Commissioners of San Juan on October 27, 1941, is granted, and in consequence thereof the execution of the judgment of this court of June 28, 1940, is stayed insofar as it decrees the reinstatement of petitioner Dr. Carlos M. de Castro in the office of city manager of the capital because the term for which he was appointed expired in February, 1941."

If the court below was correct in its conclusion that appellant's term of office expired at some time subsequent to [fol. 85] its judgment of June 28, 1940, ordering appellant's reinstatement, we think it is manifest that that court had jurisdiction to stay the execution of its judgment insofar as it decreed reinstatement, despite the fact that the said judgment had been affirmed by this court. See Puerto Rican Code of Civil Procedure, § 7, subdivision 8. Appellant urges that the issue as to his tenure of office had become *res judicata* in his favor, because in his brief before the Supreme Court of Puerto Rico at the earlier hearing he had advanced the contention that the city manager holds office during good behavior. But that court in its opinion of June 28, 1940, did not go into the question of the tenure of the office at all, and did not need to, because at that time appellant's four-year term, which the Board claims was the extent of his tenure, had not expired. Certainly, when we affirmed on the previous appeal we had no idea that we were passing on the tenure of the office. We affirmed a judgment holding that appellant had been improperly removed and ordering

his reinstatement. How long appellant should retain his office after reinstatement was quite another question. When the Supreme Court of Puerto Rico, upon remand from us, regained jurisdiction over its judgment of June 28, 1940, a new situation was then presented. It was then inappropriate, if appellant's term of office had meanwhile expired, for the Supreme Court of Puerto Rico to carry into execution its decree of reinstatement.

This brings us to the merits, the question whether under the applicable statute the city manager holds office for a life tenure (during good behavior), or, as contended by the Board, for a definite term of four years coincident with the four-year terms of the members of the Board which appointed him.

Act No. 99 of the insular legislature, approved May 15, 1931, established a special government for the body politic to be known as the "Capital of Puerto Rico". Relevant [fol. 86] portions of this Act, Laws P. R. (1931) p. 626, and of amendatory Act No. 10, Laws P. R. (1937) p. 131, are copied in the footnote.[1]

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[1] Act No. 99:

"Section 9.—The legislative powers conferred by this Act on the Capital shall be exercised by a governmental body which shall be officially known as 'Board of Commissioners of San Juan'. This Board of Commissioners shall be composed of five members, who shall be appointed by the Governor of Porto Rico, with the advice and consent of the Insular Senate, for the following terms:

One Commissioner for a term of one year;
One Commissioner for a term of two years;
One Commissioner for a term of there years;
One Commissioner for a term of four years;
One Commissioner for a term of five years.

"None of the first five commissioners appointed in accordance with this Act shall assume his office until his appointment has been confirmed by the Insular Senate.

"Section 10.—There are also hereby created the offices of City Manager, Treasurer, Director of Public Works, Director of Health and Charities, School Director, Auditor and Secretary of the Capital.

[fol. 87] The legislative powers are conferred upon a governmental body known as the "Board of Commissioners of [fol. 88] San Juan". As originally constituted by § 9 of the Act, this was a continuing body, composed of five commissioners, appointed by the Governor and confirmed by the Senate, with staggered terms, the term of one commissioner expiring each year. Section 50 of the Act, however, provided that at the general elections in 1936 and every four years thereafter the commissioners should be elected by popular vote, the commissioners previously appointed

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"Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct.

"Section 22.—The City Manager may be removed by the Board of Commissioners, for just cause, upon hearing and an opportunity to defend himself either in person or through attorneys. The following shall be causes for the removal of the City Manager: Any act of his constituting a felony; any act of his constituting a misdemeanor and implying moral turpitude; or carelessness, inexcusable negligence in the performance of his duties, or immoral or incorrect conduct in the exercise thereof.

"Section 26.—The City Manager shall appoint the following officers:

(1) Treasurer of the Capital;
(2) Director of Public Works;
(3) Director of Health and Charities;
(4) School Director;
(5) Secretary of the Capital.

"Section 27.—The Treasurer, the Director of Public Works, the Director of Health and Charities, the School Director, and the Secretary of the Capital may be removed by the City Manager, for just cause, upon hearing and an opportunity to defend themselves either in person or through attorneys. The following shall be causes for the removal of said officers: Any act of theirs constituting a felony; any act of theirs constituting a misdemeanor and implying moral turpitude; carelessness, or inexcusable ignorance in the performance of their duties, or immoral or incorrect conduct in the exercise thereof.

by the Governor under § 9 to hold office until the first Monday in January, 1937. Act No. 10, approved March 24, 1937, increased the membership of the Board by providing that the Governor should forthwith appoint, with the advice and counsel of the Senate, four additional commissioners to serve with the five commissioners who had been elected in 1936. For the future it was provided that the nine members of the Board should take office on the second Monday in February following each general election, which seems to imply that the four appointed commissioners are

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"Section 36.—The Auditor of the Capital shall be appointed by the Board of Commissioners. This official may be removed by the Board of Commissioners for just cause, after a hearing and an opportunity to defend himself either personally or by attorneys. Causes for removal of this official shall be any act performed by him which constitutes a felony; any act performed by him which constitutes a misdemeanor and implies moral turpitude; carelessness or inexcusable negligence, or immoral and incorrect conduct, in the discharge of his office.

"• • •

"Section 39.—All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. Said employees shall be appointed for the term for which each officer is appointed. The employees of the Capital may be removed for just cause by the officer appointing them, after a hearing and an opportunity to defend themselves. Any employee may be suspended from office and salary upon the preferment of charges against him by the corresponding official.

"Section 50.—The Board of Commissioners created by this Act shall be elected by popular vote at the general elections to be held in 1936, and every four years thereafter. The Commissioners appointed by the Governor of Porto Rico in accordance with section 9 of this Act shall hold office until the first Monday in January of 1937."

Amendatory Act No. 10:

"Section 1.—Section 50 of Act No. 99, entitled 'An Act to establish a special government for the Capital of Puerto

to hold office for four years, as in the case of those elected by popular vote.

Section 10 creates the offices of city manager, treasurer, director of public works, director of health and charities; school director, auditor and secretary of the Capital.

[fol. 89] Section 21 provides that the city manager shall be the chief executive of the Capital; "he shall be appointed by the Board of Commissioners created by this Act *and shall hold office during good conduct.*" [Italics ours.] Procedure for removal of the city manager by the Board "for just cause" after hearing is set forth in § 22.

Section 26 provides that the city manager shall appoint the various departmental heads previously mentioned, except the auditor. No specific provision is made as to the tenure of these officers so appointed by the city manager, but § 27 provides that they may be removed by the city manager, for just cause after hearing, the removal provisions being the same as those empowering the Board to remove the city manager.

Section 36 provides that the auditor shall be appointed by the Board of Commissioners. No specific provision is

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Rico, and for other purposes', approved May 15, 1931, as subsequently amended, is hereby amended to read as follows:

"'Section 50.—The Board of Commissioners created by this Act shall be composed of nine members. Five of these nine members shall be elected by the popular vote of the qualified voters of both precincts of San Juan at the general elections to be held in 1940 and each succeeding four years. The other four members shall be appointed by the Governor of Puerto Rico with the advice and consent of the Insular Senate. The nine members of the Board of Commissioners shall take office on the second Monday in February following each general election; *Provided*, That the five members of the Board of Commissioners elected at the general election of 1936 shall continue in office until the end of the terms for which they were elected, and said Board of Commissioners shall be increased in the manner indicated as soon as this Act takes effect. * * *"

"* * *"

made as to the auditor's term of office; but he also may be removed by the Board for just cause after hearing.

It is to be observed that the legislature has dealt in various ways with the tenure of officers and employees of the city government. The commissioners have fixed terms of years. Of the two officers to be appointed by the Board, the city manager "shall hold office during good conduct"; the auditor's tenure is not stated. Nor is any tenure stated for the other offices to which the city manager has the appointing power. "Employees" are appointed for the term of the appointing officer.

Act No. 99 supersedes, so far as concerns the capital city, the Municipal Law of April 28, 1928, Laws, P. R. (1928) p. 334, under which the chief executive was a mayor, elected for a fixed term, though subject to impeachment by the municipal assembly. Appellant contends that the legislature, in providing that the city manager should hold office "during good conduct," evidenced a clear and unambiguous pur- [fol. 90] pose to introduce experimentally in the city of San Juan a new type of city government, under which the chief executive or city manager would hold office during good behavior "without being tied to the whims and uncertainties of partisan politics."

The court below, however, reached the conclusion that "the tenure of office of the city manager of the capital is that of four years, provided that during the same he observe good behavior."

It is difficult for us to see how § 21 could mean anything different in 1937, and thereafter, from what it meant in 1931, when the new form of government was instituted. There is no basis for saying that the first city manager, appointed in 1931, held a four year term, for at that time the tenure of office of the commissioners themselves was not four years, and their terms were staggered so that only one of the five commissioners went out of office each year.

But passing that difficulty, suppose it had been provided from the outset that the whole body of commissioners should be elected by popular vote every four years, as § 50 provided for 1936 and thereafter. It might then be implied that the auditor, whose tenure is not specifically stated, holds office during a four year term, coinciding with that of the commissioners. The only other alternative would

be (1) that the auditor holds office at the pleasure of the Board, which would seem to be contrary to the implication of the further provision that the auditor is removable by the Board for just cause, after notice and hearing,[2] or (2) that the auditor holds office for life, subject to removal for cause. But a life tenure for public officers is the exceptional thing and will not be read into the statute by implication. *Shurtleff* v. *United States*, 189 U. S. 311, 316 (1903). Not-[fol. 91] withstanding the provision that the city manager shall hold office "during good conduct," the court below has read the statute as meaning that the city manager has the same limited tenure as that of the auditor, as to whose tenure the legislature is silent. Under this interpretation the phrase "during good conduct" in § 21 seems to be rendered meaningless and of no significance.

The tenure of federal judges under Article III, § 1 of the Constitution is described as "during good behavior," which means for life, provided they behave themselves. *Cf. Matter of Hennen*, 13 Pet. 230, 258 (1839). Nobody ever supposed that "during good behavior" meant that the judge would hold office during the term of the president who appointed him, provided that he observed good behavior during that time. In *Smith* v. *Bryan*, 100 Va. 199, 203, 40 S. E. 652, 653 (1902), cited by the court below in another connection, it is stated: "An official tenure 'during good behavior' is for life, unless sooner determined for cause. And removal for cause implies a right to be heard, and a trial in one form of procedure or another."

The steps in the reasoning of the court below are as follows:

(1) Life tenure for public officers is the exception; hence should not be read into the statute by implication but only if the intention of the legislature to that effect appears to be so evident as to permit of no doubt. This is an accepted canon of construction, for which the court properly cites *Shurtleff* v. *United States*, 189 U. S. 311 (1903). That case involved the tenure of the office of general appraiser of

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[2] See *People of Puerto Rico ex rel. Luis A. Castro*, P. R. R. —, decided by the Supreme Court of Puerto Rico July 29, 1942.

merchandise. It was provided in the act creating the office that the appraisers should be appointed by the President with the advice and consent of the Senate and might be removed from office at any time by the President for inefficiency, neglect of duty or malfeasance in office. Beyond [fol. 92] that the statute was silent as to the tenure of the office. The court held that Congress had not clearly enough indicated an intention to make the tenure one for life subject only to removal for cause; and therefore that the act should be construed as leaving unrestricted the President's implied power of removal without cause. But the significant thing is that the act there involved did not provide that appraisers should hold office "during good behavior". The court pointed out (p. 316) that "The tenure of the judicial officers of the United States is provided for by the Constitution, but with that exception no civil officer has ever held office by a life tenure since the foundation of the government". How is the life tenure of judicial officers provided for in the Constitution except by the phrase that they shall hold office "during good behavior"? The rule of interpretation laid down in the *Shurtleff* case, where the act in question did not use the phrase "during good behavior", should not be used to create an ambiguity in § 21 of the act now before us, where the legislature describes the tenure simply as "during good conduct".

(2) The court points to the "anomaly" which would result if the city manager were held to have a life tenure, from the fact that the treasurer, the director of public works, etc., might under § 26 be appointed "for a limited term to be fixed by the city manager," while an employee attached to the office of the city manager, "for example, the messenger of his office, by the mere fact of being appointed by the city manager would hold his employment for life unless removed for just cause." Along the same line, the court states that an uncalled for discrimination would be created between the employees appointed by the other officers and the employees appointed by the city manager, "as the former would hold their employments during the tenure of the appointing officer while the term of office of [fol. 93] the employees appointed by the city manager

would be for life."[3] But these "anomalies," if such they be, are relevant only if it is assumed that there is doubt or ambiguity as to the meaning of § 21.

(3) The court invokes the rule of construction that where the legal provision describing a term is uncertain or doubtful, an interpretation will be adopted which limits the term to the shortest time—in this case, "that of four years, which is the one of the majority, at least, of the Board of Commissioners which appointed" the city manager. This, again, assumes some ambiguity in § 21.

(4) The court refers to the rule that in cases of doubt "the practical construction given to a statute by public officials and acted upon by the people" will be regarded as decisive. In this connection the court took judicial notice of the facts that at the general elections held in 1936 and 1940 the various political parties had indicated to the electorate in advance their respective choices for city manager, and that when the newly elected commissioners took office the board proceeded to appoint as city manager the candidate of the successful political party. Appellant objects that the court below ought not to have taken judicial notice of these facts; that he had no opportunity to put in evidence other facts or explanations which would rob the judicially noticed facts of their significance, and thereby he was denied due process of law. But it is clear that an appellate court may take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction. If the court below took judicial notice of some fact that wasn't so, appellant, on appeal to us, by reference to official records or in some other appropriate way, could [fol. 94] bring the true situation to our notice, and we in our turn, taking judicial notice of the relevant facts, could review any error in statutory interpretation committed by the court below as the result of a misapprehension of the facts judicially noticed by it. Appellant, however, has not undertaken to enlighten us on these matters. Indeed, appel-

[3] Whose "life"? Presumably not that of the employee, for the idea in § 39 seems to be that the employee holds office during the tenure of the officer who appointed him. If appellant is correct, the tenure of the city manager is for life unless sooner terminated by his resignation or removal for cause.

lant does not deny the fact, as stated by the court below, that appellant himself was the preannounced choice for city manager of the winning party at the general elections of 1936. And there seems to be no doubt of the further fact, stated by the court below, that when the newly elected commissioners came into office on January 4, 1937, they proceeded at once to appoint appellant as city manager.[4]

[4] In his opposition to the motion of the Board for stay of execution of the judgment insofar as it ordered reinstatement, filed in the court below, appellant, referring to the tenure of his predecessor in the office, said: "The fact remains that Mr. Benitez Castano did not cease in the exercise of his office because a part of the Board of Commissioners was again elected in 1936, but because of his voluntary resignation, effective many months after January, 1937." But we note that in appellant's original petition in the District Court of San Juan, seeking review of the Board's order of removal, appellant recites that he "held the public office of City Manager, appointed therefor by the respondent Board on the 4th of January 1937." In the complaining petition filed before the Board, seeking removal of appellant, it is recited: "The respondent, Carlos M. de Castro is and has been at all times stated in this petition City Manager having been appointed by the Board of Commissioners of the Capital for that office during good conduct, in the month of Janufry 1937, the said Carlos M. de Castro having taken possession of said office on the 4th day of January 1937 temporarily and on the 19th day of March 1937, as proprietor." Appellant's answer, referring to this paragraph in the complaint, states: "He admits that he is City Manager, appointed by the Board of Commissioners of San Juan and has been in the discharge of his present office from the 4th day of January 1937 up to the present time." In the court's opinion in *Rodriguez* v. *de Castro*, 52 P. R. R. 275, 277 (1937), there is quoted a letter written by appellant stating that Mr. Jesús Benítez Castaño "ceased to be City Manager of the Capital on the 19th of March, 1937." It may be surmised from all this that the newly elected board coming into office on January 4, 1937, asserted on that day its power to appoint, and did appoint, appellant as city manager, but that the incumbent, Mr. Benítez Castaño, at first demurred, perhaps making the claim which appellant now makes on this appeal, that the city manager holds office "during good conduct".

[fol. 95] Appellant is no doubt embarrassed by the argument *ad hominem*, namely, that appellant himself obtained the office of city manager upon an assertion of an interpretation of § 21 inconsistent with that which he now maintains. But we know of no principle of "estoppel" which would preclude appellant from taking this inconsistent position in the present proceedings.

The interpretation put upon the Act by the local political parties and by the successive boards of commissioners would be a relevant consideration in determining the construction of the Act, if the Act itself is deemed to be doubtful or ambiguous in meaning.

If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of § 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause "and shall hold office during good conduct" as meaning that "the tenure of office of the city manager of the capital is that of four years, provided that during the same he observe good behavior." But in *Bonet* v. *Texas Co.*, 308 U. S. 463, 471 (1940), the court said:

"To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though [fol. 96] we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

We are not prepared to say that the judgment now under review is "inescapably wrong." For many years this court has not had much luck in reversing the Supreme Court of Puerto Rico on questions of local law. As we pointed out in *de la Torre* v. *National City Bank*, 110 F. (2d) 976, 983 (1940), "though Congress has given us appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the value in controversy exceeds $5,000, the

exercise of this jurisdiction is so restricted by the canon prescribed by the Supreme Court of the United States that appeals in such cases are likely to be futile and merely to cause needless delay and expense."

It may be pointed out that our function in this class of cases, technically, at least, is different from that of the Supreme Court of the United States upon review of decisions of state courts. There, the Supreme Court has no appellate jurisdiction in matters of state law, and hence it accepts as conclusive the decisions of the state tribunals in matters of local law. But Congress has given us, and the Supreme Court of the United States upon certiorari, appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the jurisdictional amount is involved. It may well be that as a matter of legislative policy we ought not to have this jurisdiction; the present case is a good example, involving as it does a political matter of strictly local concern in San Juan, Puerto Rico. But as the law now stands litigants bring these cases to us as a matter of right, and we have to pass on them. It is a bit humiliating to this court to be obliged to act practically as a rubber stamp, or else to be reversed by the Supreme Court of the United States.

[fol. 97] Incidentally, we have two lines of appellate jurisdiction from Puerto Rico, one from the United States District Court for Puerto Rico and the other from the Supreme Court of Puerto Rico, 28 U. S. C. § 225. Appeals from the District Court may involve questions of local Puerto Rican law; so far as we know, the "inescapably wrong" rule has never been applied in such cases. Suppose, upon such an appeal, we should decide a question of local law which had never been passed upon by the Supreme Court of Puerto Rico, and that subsequently, in other litigation, the same question should come before that court. Would it be "inescapably wrong" if it should refuse to follow our previous ruling on the point? Or is the Supreme Court of Puerto Rico free in such a case to make its own interpretation of the local law, brushing aside an earlier decision of this court, which on the face of 28 U. S. C. § 225 has appellate jurisdiction over it?

We have gone into this case at such length not in any spirit of complaint, because we recognize that the Supreme Court of the United States applies to itself the same self-denying canon which it imposes on us; and it may be a good

thing. But to save future litigants from disappointment and futile expense, we wish to reiterate that our appellate jurisdiction in this class of cases is pretty much of a dead letter.

The judgment of the Supreme Court of Puerto Rico is affirmed, with costs to the appellee.

On the same day, to wit, June 14, 1943, the following Judgment was entered:

JUDGMENT—June 14, 1943

This cause came on to be heard May 4, 1943, upon the transcript of record of the Supreme Court of Puerto Rico, and was submitted on briefs by leave of Court.

Upon consideration whereof, It is now, to wit, June 14, [fol. 98] 1943, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is affirmed, with costs to the appellee.

By the Court.

Roger A. Stinchfield, Chief Deputy Clerk.

Thereafter, to wit, on June 30, 1943, mandate was stayed until further order of Court.

CLERK'S CERTIFICATE

I, Roger A. Stinchfield, Chief Deputy Clerk of the United States Circuit Court of Appeals for the First Circuit, and, during the temporary absence of the clerk, in charge of the affairs of the clerk's office of said court and custodian of its files and records, certify that the foregoing pages numbered 1 to 98, inclusive, contain and are a true copy of the record and all proceedings to and including July 15, 1943, in the cause in said court numbered and entitled, No. 3796, Carlos M. De Castro, Petitioner, Appellant, v. Board of Commissioners of San Juan, Respondent, Appellee.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fifteenth day of July, A. D. 1943.

Roger A. Stinchfield, Chief Deputy Clerk. (Seal.)

[fol. 99] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 28, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

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SEP 14 1943
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HUGH R. FRANCIS,
Counsel for the Petitioner.

GABRIEL DE LA HABA,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

Your petitioner, Carlos M. de Castro, of San Juan, Puerto Rico, prays a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals, First Circuit, entered on June 14, 1943, in the cause entitled Carlos M. de Castro, Petitioner, versus Board of Commissioners of San Juan, Respondent, (No. 3796) affirming the judgment of the Supreme Court of Puerto Rico by which execution of a former judgment in favor of the petitioner was ordered stayed.

The term for filing a petition for a writ of certiorari does not expire until September 14, 1943. Section 8 of the Act of February 13, 1925 (28 U. S. C. A. 350).

A stay of execution was granted by the Court below to enable the petitioner to apply for a writ of certiorari to this Honorable Court.

Summary Statement.

The petitioner, Carlos M. de Castro, was temporarily appointed City Manager of the Capital of Puerto Rico on February 4, 1937, pursuant to Section 21 of Act No. 99, Laws of Puerto Rico 1931, page 639 (Former Record, p. 46-47). The Board of Commissioners, after hearing upon charges against De Castro, removed him from office on April 5, 1939. The District Court of San Juan upheld the Board, and, on certiorari proceedings to review, the Supreme Court of Puerto Rico, on June 28, 1940, reversed the judgment of the District Court and ordered the reinstatement of the petitioner to date back to January 5, 1939 when he was suspended from office and pay, (R. 1-11).

The respondent took an appeal to the Circuit Court of Appeals for the First Circuit which affirmed the judgment of the Supreme Court of Puerto Rico on January 10, 1941. *Board of Commissioners of San Juan* v. *De Castro*, 116 F. (2d) 806. Certiorari was denied by this Hon. Court on October 18, 1943, 314 U. S. 614.

The entire record of the appeal to the Circuit Court and certiorari proceedings before the Supreme Court of the United States appear under docket number 94, October Term 1941. For a comprehensive statement of our case, we shall have to refer both to the former record before this Honorable Court and to the record of the Circuit Court, in the later proceedings, which gave rise to this petition for certiorari. To distinguish between the two records we shall refer to the first as the Former Record.

A short time after the mandate of the Circuit Court was sent to the Supreme Court of Puerto Rico, on October 27, 1941, the respondent filed a motion to stay execution of the

judgment of June 28, 1940, insofar as it ordered the reinstatement of the petitioner (R. 12 to 18).

The petitioner filed an opposition to the motion to stay (R. 19 to 36), and after hearing thereon, the Supreme Court of Puerto Rico on January 14, 1942, entered a second judgment finding that "the tenure of office of the city manager is that of four years, provided that during the same he observe good behavior", and consequently decreeing that the petitioner's term of office, having expired on the second Monday of February 1941, the motion to stay execution should be granted and the judgment of June 28, 1940, stayed insofar as it ordered the reinstatement of the petitioner (R. 36 to 46).

The petitioner filed an elaborate motion to reconsider pointing out the errors of the Supreme Court of Puerto Rico in its second judgment January 14, 1942 but the same was denied without hearing on opinion (R. 47 to 66).

An appeal was taken by the petitioner, to the United States Circuit Court of Appeals for the First Circuit, under the provisions of Section 128 of the Judicial Code of the United States (28 U. S. C. A. 225). On June 14, 1943, the Circuit Court affirmed the judgment of the Supreme Court of Puerto Rico of January 14, 1942, from which the petitioner is requesting a review by certiorari. In affirming the judgment of the Supreme Court of Puerto Rico, the Circuit Court, though with full conviction of the error committed by the lower court, found itself constrained to affirm and stated in its opinion:

> "The interpretation put upon the Act by the local political parties and by the successive boards of commissioners would be a relevant consideration in determining the construction of the Act, if the Act itself is deemed to be doubtful or ambiguous in meaning.
>
> "If we were free to take a wholly independent view of the point at issue we would be inclined to conclude

that the meaning of S 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause "and shall hold office during good conduct" as meaning that "the tenure of office of the city manager of the capital is that of four years, provided that during the same he observe good behavior." But in Bonet *v.* Texas Co., 308 U. S. 463, 471 (1940), the court said:

"To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

"We are not prepared to say that the judgment now under review is "inescapably wrong". For many years this court has not had much luck in reversing the Supreme Court of Puerto Rico on questions of local law. As we pointed out in de la Torre *v.* National City Bank, 110 F. (2d) 976, 983 (1940), "though Congress has given us appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the value in controversy exceeds $5,000, the exercise of this jurisdiction is so restricted by the canon prescribed by the Supreme Court of the United States that appeals in such cases are likely to be futile and merely to cause needless delay and expense."

"It may be pointed out that our function in this class of cases, technically, at least, is different from that of the Supreme Court of the United States upon review of decisions of state courts. There, the Supreme Court

has no appellate jurisdiction in matters of state law, and hence it accepts as conclusive the decisions of the state tribunals in matters of local law. But Congress has given us, and the Supreme Court of the United States upon certiorari, appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the jurisdictional amount is involved. It may well be that as a matter of legislative policy we ought not to have this jurisdiction; the present case is a good example, involving as it does a political matter of strictly local concern in San Juan, Puerto Rico. But as the law now stands litigants bring these cases to us as a matter of right, and we have to pass on them. It is a bit humiliating to this court to be obliged to act practically as a rubber stamp, or else to be reversed by the Supreme Court of the United States.

"Incidentally, we have two lines of appellate jurisdiction from Pureto Rico, one from the United States District Court for Puerto Rico and the other from the Supreme Court of Puerto Rico. 28 U. S. C. S. 225. Appeals from the District Court may involve questions of local Puerto Rican law; so far as we know, the "inescapably wrong" rule has never been applied in such cases. Suppose, upon such an appeal, we should decide a question of local law which had never been passed upon by the Supreme Court of Pureto Rico, and that subsequently, in other litigation, the same question should come before that court. Would it be "inescapably wrong" if it should refuse to follow our previous ruling on the point? Or is the Supreme Court of Pureto Rico free in such a case to make its own interpretation of the local law, brushing aside an earlier decision of this court, which on the face of 28 U. S. C. S. 225 has appellate jurisdiction over it?

"We have gone into this case at such length not in any spirit of complaint, because we recognize that the Supreme Court of the United States applies to itself the same self-denying canon which it imposes on us; and it may be a good thing. But to save future litigants from disappointment and futile expense, we wish

to reiterate that our appellate jurisdiction in this class of cases is pretty much of a dead letter.

"The judgment of the Supreme Court of Puerto Rico is affirmed, with costs to the appellee."

The petitioner consistently asserted before the Supreme Court of Puerto Rico, and before the Circuit Court, that Section 21 of the Puerto Rican statute, being clear in its meaning and intent, the tenure of office of the City Manager is during good behavior and not for a term of four years. It was therefore a grave error of the Puerto Rican Supreme Court to seek a different interpretation by extrinsic means, such as judicial notice of isolated facts, or otherwise by means of evidence in a Court which has only appellate jurisdiction.

The former record shows that it was an accepted fact that the petitioner's term of office was during good behavior (Former R. 20-43, 46-184).

The petitioner raised the question of lack of jurisdiction of the Supreme Court of Puerto Rico to amend its first judgment of June 28, 1940, in order to amplify its terms and include the interpretation of Section 21 of the Puerto Rican law (R. 21-22-23-24-26-34-35-36). In its motion to reconsider the additional or amending judgment of the Supreme Court of Puerto Rico of January 14, 1942 (R. 47 to 66), the petitioner again insisted that the court lacked jurisdiction to amend a former judgment by incorporating thereto matters which the court held had not been at issue and thus depriving the petitioner of due process in the conduct and decision of his case.

The Circuit Court dismissed our contention of lack of jurisdiction and violation of petitioner's rights to a fair and just proceedings, basing its finding, on a premise which it later repudiates. The Circuit Court states "If the Court below was correct in its conclusion that appellant's term of

office expired at some time subsequent to its judgment of June 28, 1940, ordering appellant's reinstatement, we think it manifest that the court had jurisdiction to stay the execution of its judgment insofar as it decreed reinstatement, despite the fact that said judgment had been affirmed by this Court. See Puerto Rican Code of Civil Procedure, Section 7, Subdivision 8." (Opinion Circuit Court R. 81).

Conversely, if the lower court was not correct in its conclusion, as held by the Circuit Court in the portion of the opinion above transcribed, we must perforce reach the inevitable conclusion, asserted at all times by the petitioner, that the Supreme Court could not amend its judgment of June 28, 1940, because to do so, would first require the determination of a question which both the Supreme Court of Puerto Rico and the Circuit Court stated had never been the subject of issue and consideration. (R. 38), Opinion of Court below R. 82.

Jurisdiction of the Court.

The basis of jurisdiction of the Supreme Court of the United States is found in the provisions of Section 240 (a) of the Judicial Code of the United States, 28 U. S. C. A. 347.

The Statute of Puerto Rico involved in the consideration of this petition is Act No. 99 of May 15, 1931, Laws of Puerto Rico 1931, page 626, and particularly Sections 21 and 22 which read as follows:

"Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct.

"Section 22.—The City Manager may be removed by the Board of Commissioners, for just cause, upon hearing and opportunity to defend himself either in person or through attorneys. The following shall be causes for

the removal of the City Manager: Any act of his constituting a felony; any act of his constituting a misdemeanor and implying moral turpitude; or carelessness, inexcusable negligence in the performance of his duties, or immoral or incorrect conduct in the exercise thereof."

The judgment of the United States Circuit Court of Appeals sought to be reviewed by this petition was rendered on June 14, 1943. (R. 93).

Questions Presented.

1. The Circuit Court of Appeals erred in holding that under the Puerto Rican Code of Civil Procedure, Section 7, Subdivision 8, the Supreme Court of Puerto Rico could amend its prior judgment of June 28, 1940, so as to interpret the clear context of Article 21 of Act No. 99 of the Legislature of Puerto Rico and limit the petitioner's right to office, from that of tenure during good behavior to a four year term, thereby sanctioning a departure by the Insular Court from well established, accepted, and usual judicial proceedings.

2. Though the Circuit Court of Appeals found that the lower court "went beyond the permissible limits of interpretation" in holding that the term of office of the petitioner was that of four years instead of during good behavior, as provided in Section 21 of the Statute, nevertheless, the judgment of the lower court is affirmed because the appellate court was not prepared to hold that such interpretation is "inescapably wrong", notwithstanding that the error of the lower court was clear or manifest and its decision patently erroneous.

3. The Circuit Court of Appeals places an unduly strict, limited and harsh interpretation on the decision in *Bonet* v. *Texas Co.*, 308 U. S. 463, 471, thereby enjoining all appeals

from the Supreme Court of Puerto Rico, which are expressly authorized by Section 128 of the Judicial Code of the United States (28 U. S. C. A. 225), as a matter of right, when the interpretation of, or action under a local Puerto Rico law is involved.

Reasons Relied On for the Allowance of the Writ.

This case involves an important question of interpretation of statutes. The Supreme Court of Puerto Rico has deviated from the generally accepted and usual course of proceedings, both in the Federal and State jurisdictions, and has been permitted to do so by the decision rendered by the Circuit Court. It is a universal canon of construction that when a statute is clear in its wording and meaning there is nothing to interpret and the words and their meaning must be given their usual force and effect.

The instant case does not deal with various possible interpretations to Section 21 of the Puerto Rican statute thereby enjoining the Circuit Court of Appeals from disturbing the criterion of the Supreme Court of Puerto Rico even though said Court "may have chosen what might seem to be the less reasonable of two possible interpretations" in accordance with the doctrine outlined by this Hon. Court in *Bonet* v. *Texas Co.* cited in the Circuit Court's opinion, with reference to appeals from the Puerto Rican Supreme Court. In our modest opinion, only one possible logical and fair interpretation can be given to Section 21 of the Puerto Rican statute, and that is the one given by the Circuit Court, which, notwithstanding, affirmed the Supreme Court's judgment on the very limited and harsh interpretation given by it to the *Bonet* case and to this Honorable Court's meaning and intent upon establishing said doctrine.

It is of vital importance to litigants and attorneys in Puerto Rico that they should know where they stand with

respect to the right of appeal that is granted by Section 128 of the Judicial Code from the judgments of the Supreme Court of Puerto Rico, and, that this Hon. Court, once and for all, affirm the position of the Circuit Court in its interpretation of the *Bonet* case, or that in view of the merits of the instant case and the resulting unfairness to the petitioner, the Court clarify the doctrine in its general application in order that all litigants in Puerto Rico may know by what test they should be guided in their appeals and in what instances the Circuit Court should intervene and reverse the Supreme Court of Puerto Rico. It is respectfully submitted that, apparently, the only guide or test at present is the *Bonet* case in which this Hon. Court has stated that in order to justify a reversal in cases of the interpretation of a local statute by the Supreme Court of Puerto Rico, "the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous". This test is apparently not a sufficient guide to the court below as evidenced by the opinion rendered. The Circuit Court practically closes the doors of the appellate court to Puerto Rican litigants, and, unintentionally, discriminates in favor of those fortunate persons who through diversity of citizenship, can take their cases to the United States District Court for Puerto Rico.

In the interest of litigants, attorneys, and in a spirit of a more sympathetic approach to the rights of litigants of Puerto Rico under the Constitution and the Organic Act of Puerto Rico in matters of local concern we feel that the instant case merits review by this Hon. Court.

WHEREFORE your petitioner prays that a writ of certiorari be granted herein and that the final judgment of the Circuit Court of Appeals for the First Circuit, in the case entitled *Carlos M. de Castro, Petitioner* v. *Board of Commissioners*

of San Juan, Respondent, No. 3796, affirming the judgment of the Supreme Court of Puerto Rico, be reversed.

San Juan, Puerto Rico, July 30th, 1943.

HUGH R. FRANCIS,
Attorney for the petitioner.

GABRIEL DE LA HABA,
Of Counsel.

I hereby certify: That the foregoing petition, in my opinion, is well founded and entitled to be considered by this Court, and, further, that it is filed in good faith and not for the purpose of delay.

San Juan, Puerto Rico, July 30th, 1943.

HUGH R. FRANCIS.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OR SAN JUAN.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Judgments and Opinions of the Courts Below.

The opinion and judgment of the Supreme Court of Puerto Rico, rendered on June 28, 1940, is not reported in English. It appears in the Spanish edition of the Puerto Rico Reports in 57 D. P. R. 153, and in the Record, pages 1 to 11.

The second opinion and judgment of the Supreme Court of Puerto Rico, rendered January 14, 1942, has not been reported in English and appears reported in the Spanish Edition, 59 D. P. R. page 676. It appears in the Record, pages 36 to 46. The opinion of the Circuit Court of Appeals for the First Circuit rendered June 14, 1943, is not reported and will be found in the record, pages 80 to 93.

Jurisdiction.

The jurisdiction of this Hon. Court is invoked under the provisions of Section 240 a of the Judicial Code of the United States, as amended by the Act of Congress of February 13, 1925, C. 229, 43 Stat. 938 (28 U. S. C. A. 347).

The judgment of the Circuit Court of Appeals for the First Circuit was entered on June 14, 1943, and a petition for writ of certiorari to this Hon. Court was filed by the petitioner on September 14, 1943, under the provisions of the above statute and Rule 38 of the Rules of this Court.

Statement.

A statement of the case is made in the petition for writ of certiorir to this Hon. Court (pp. 2-7).

The grounds for the petition, stated concisely, are as follows:

The Supreme Court of Puerto Rico rendered a judgment on June 28, 1940, in the case of Carlos M. de Castro *vs.* Board of Commissioners of San Juan, 57 D. P. R. 153, by which judgment the Board of Commissioners was ordered to reinstate De Castro as City Manager of San Juan, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay (R. p. 1 to 11). The decision was appealed to the United States Circuit Court, First Circuit, by the Board of Commissioners and there affirmed (116 F. (2d) 806). Certiorari was denied by the Supreme Court of the United States on October 13, 1941, 314 U. S. 614.

Shortly after the mandate was received in the Supreme Court of Puerto Rico, the defendant, Board of Commissioners of San Juan, filed a motion to stay the execution of the judgment insofar as the same ordered the reinstatement of the petitioner De Castro (R. p. 12 to 18). The petitioner

opposed this motion before the Supreme Court (R. p. 19 to 36).

The Supreme Court of Puerto Rico rendered a judgment and opinion declaring that the tenure of office of the petitioner De Castro, as City Manager of San Juan, had terminated in February 1941, and therefore, granted a motion to stay execution of the judgment. Carlos M. de Castros *vs.* Board of Commissioners, 59 D. P. R. p. 676 (R. p. 36 to 46).

The petitioner De Castro filed a motion to reconsider the judgment of the Supreme Court of January 14, 1942 (R. p. 47 to 66). Without a hearing thereon, the Supreme Court of Puerto Rico denied the motion to reconsider and the petitioner took an appeal to the United States Circuit Court of Appeals for the First Circuit on April 13, 1942, and on June 14, 1943, the Court below rendered its opinion and judgment affirming the judgment of the Supreme Court of Puerto Rico (R. p. 80 to 93).

The petitioner consistently argued before the courts below that the Supreme Court of Puerto Rico was without jurisdiction to amend its judgment of June 28, 1940, by the second judgment of January 14, 1942, so as to incorporate in the latter a matter, which if at issue when the first judgment was rendered, became *res judicata*, and if not at issue would render the second judgment null and void because of the fact that under Section 7, subdivision 8 of the Puerto Rican Code of Civil Procedure only clerical errors or misprisions could be amended, and the change introduced by the Supreme Court of Puerto Rico into its first judgment by that of January 14, 1942, did not consist of amendments of clerical errors or misprisions but of a fundamental matter which changed the issue of the question that the court states was before it.

The petitioner also contended before the courts below that the Supreme Court of Puerto Rico, in order to amend its first judgment of June 28, 1940, by the second judgment

of January 24, 1942, made an interpretation of Section 21 of the Act creating the Government of the Capital of Puerto Rico approved May 15, 1931, Laws of Puerto Rico 1931, page 626, which is contrary to the clear meaning and intent of the statute and contrary to all accepted rules of interpretation. This Section reads as follows:

> "Section 21. The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

The Supreme Court of Puerto Rico held that the meaning of the statute quoted is that the City Manager of San Juan holds office for a term of four years provided during the same he observe good behavior (R. p. 45).

In deciding the case, the Court below, although granting that the Supreme Court of Puerto Rico went beyond the permissible limits of interpretation in reading into the statute a meaning which departed from the true and correct interpretation of the clear wording thereof, and that the evidence of judicial notice upon which the Supreme Court of Puerto Rico based its opinion would have been proper only in the event that the Act itself should be deemed to be doubtful or ambiguous in meaning, nevertheless, the Circuit Court affirmed the judgment on the ground that it was not prepared to say that the judgment under review was inescapably wrong and that it was enjoined from reversing the Supreme Court of Puerto Rico in appeals taken on questions of local legislation (28 U. S. C. A. 225), on the grounds stated by this Hon. Court in *Bonet* v. *Texas Co.*, 308 U. S. 463.

Regardless of the interpretation placed by the Court below on the *Bonet* case, the petitioner contended before the courts below that he was being deprived of the right to due process of law because of the fact that the Supreme Court of Puerto Rico lacked jurisdiction to amend its judgment

of June 28, 1940, by the additional or supplementary judgment of January 14, 1942, because to do so the Supreme Court of Puerto Rico had to first make an interpretation of Section 21 of the Act of May 15, 1931, which itself and the court below, declared in their opinions that the interpretation of this section had not been the subject of consideration or issue when the first judgment was rendered (R. p. 38 to 81).

If the matter was being decided for the first time by the Supreme Court of Puerto Rico in its judgment of January 14, 1942 and had not been part of the issues of the case when the first decision was rendered on June 28, 1941, it appears clear, that the Supreme Court of Puerto Rico went beyond the scope of its jurisdiction to amend, under the provisions of Section 7, subdivision 8 of the Code of Civil Procedure of Puerto Rico, which is identical with Section 128, Subdivision 8 of the California Code of Civil Procedure, under which, after the entry of a final judgment the power to change is gone and any further judgment, or order, materially varying the judgment is a nullity, since the Court is without jurisdiction.

Specification of Errors Urged.

1. The Circuit Court of Appeals erred in holding that under the Puerto Rican Code of Civil Procedure, Section 7, subdivision 8, the Supreme Court of Puerto Rico could amend its prior judgment of June 28, 1940, so as to interpret the clear context of Article 21 of Act No. 99 of the Legislature of Puerto Rico and limit the petitioner's right to office, from that of tenure during good behavior to a four year term, thereby sanctioning a departure by the Insular Court from well established, accepted, and usual judicial proceedings.

2. Though the Circuit Court of Appeals found that the lower court "went beyond the permissible limits of interpre-

tation" in holding that the term of office of the petitioner was that of four years instead of during good behavior, as provided in Section 21 of the Statute, nevertheless, the judgment of the lower court is affirmed because the appellate court was not prepared to hold that such interpretation is "inescapably wrong", notwithstanding that the error of the lower court was clear or manifest and its decision patently erroneous.

3. The Circuit Court of Appeals places an unduly strict, limited and harsh interpretation on the decision in *Bonet* v. *Texas Co.*, 308 U. S. 463, 471, thereby enjoining all appeals from the Supreme Court of Puerto Rico, which are expressly authorized by Section 128 of the Judicial Code of the United States (28 U. S. C. A. 225), as a matter of right, when the interpretation of, or action under a local Puerto Rican law is involved.

Argument.

Point One.

The Circuit Court of Appeals erred in holding that the Supreme Court of Puerto Rico could amend its judgment of June 28, 1940, by the second judgment rendered on January 14, 1942, under the provisions of Section 7, Subdivision 8 of the Puerto Rican Code of Civil Procedure.

The Section and subdivision cited from the Puerto Rican Code of Civil Procedure, 1933 Edition, reads as follows:

Section 7. (128 Cal.) Every court has power:

* * * * * * *

8. To amend and control its process and orders so as to make them conformable to law and justice.

This Section is identical with Section 128, subdivision 8, of the California Code of Civil Procedure which reads as follows:

> Section 128. Powers Respecting Conduct of Proceedings. Every court shall have power:
>
> . . . . . .
>
> 8. To amend and control its process and orders so as to make them conformable to law and justice.

Kerr's Cyclopedic Code of California Vol. 3, Part I, Sect. 7.

Under this statute, only clerical errors or misprisions can be corrected, and no new matter can be introduced into a judgment by way of amendment.

First National Bank v. *Dusy*, 110 Cal. 69.
O'Brien v. *O'Brien*, 124 Cal. 422.
In re *Kamp*, 59 New York 212.
United R. R. Co. v. *Court*, 170 Cal. 755.
McConville v. *Sup. Court*, 78 Cal. App. 203, 248 Pac. 553.
Los Angeles v. *Sup. Court*, 94 Cal. App. 433, 271 Pac. 363.
Calkins v. *Monroe*, 17 Cal. App. 324, 119 Pac. 680.
Crenshaw Bros. v. *Southern Pac.*, 42 Cal. App. 44, 123 Pac. 208, 250 U. S. 669, 63 L. Ed. 1198, Cert. denied.
Guillespie v. *Andrews*, 78 Cal. App. 599, 248 Pac. 715.

After the entry of a final judgment the power of a court to change is gone, except as it may be authorized by the rules governing amendments and the Code provisions for conforming the conclusions and judgment to the findings of fact. Any further judgment, or order, materially varying the judgment is a nullity since the Court is without jurisdiction.

Bank v. *Dodson*, 127 Cal. 208;
White v. *White*, 130 Cal. 597;
Consolidated Const. Co. v. *Pac. Electric Ry.*, 184 Cal. 244.

Proceedings for amendment of a judgment should not be permitted to become revisory or appellate in their nature, and, ought never to be the means of modifying or enlarging the judgment or the judgment record so that it shall express something that the Court did not pronounce even though the proposed amendment embraces matter which clearly could or even should have been pronounced.

Leonis v. *Leffingwell*, 126 Cal. 369;
Estate of Potter, 141 Cal. 424;
Takawa v. *Hale*, 170 Cal. 323;
Haime Piano Co. v. *Bloomer*, 193 Cal. 398;
Mann v. *Mann*, 6 Cal. App. 610, 92 Pac. 740.
Forrester v. *Lawler*, 14 Cal. App. 170, 111 Pac. 284.

Those matters as to which the power of amendment extends are ordinarily described as clerical errors or misprisions, as distinguished from judicial errors which are not amendable. *Fay* v. *Stubenranch*, 141 Cal. 573.

In denying the petitioner's opposition to the amendment by way of interpretation of new matter, and in deciding that under Section 7, subdivision 8 of the Puerto Rican Code of Civil Procedure it had complete jurisdiction to amend its former judgment, the Supreme Court of Puerto Rico was apparently unaware of the fact that its own interpretation of Section 7 conforms to the general interpretation of the courts, specially those of California. A similar question was decided by our Supreme Court and the authority of the decision has stood since the year 1913. We refer to the case of *Marvin & Jones Inc.* v. *Torres*, 19 P. R. R. 46, in which the Court restates the doctrine that a judgment can-

not be, fundamentally amended under the provisions of Section 7, subdivision 8 of the Code of Civil Procedure of Puerto Rico, and can only be changed when the purpose of such change is to correct a clerical error or an involuntary omission to conform the judgment to the record. We see no reason why the Court below should have reported from its former decision when it conforms to the universally accepted procedure.

This doctrine is uniformly accepted in all the western States that have provisions similar to those contained in the California and Puerto Rican codes. See Bancroft's Code Practice and Remedies, Vol. 3, Sec. 1832.

In the above particular the Court below has sanctioned a departure by the Supreme Court of Puerto Rico from the generally accepted and usual course of legal proceedings, and in its judgment, dismisses the petitioner's contention of lack of jurisdiction to amend, basing its findings on a premise which it later repudiates when it says: "If the court below was correct in its conclusion that the appellant's term of office expired at sometime subsequent to its judgment of June 28, 1940, ordering appellant's reinstatement, we think it manifest that the court had jurisdiction to stay the execution of its judgment insofar as it decreed reinstatement, despite the fact that said judgment had been affirmed by this Court. See Puerto Rican Code of Civil Procedure, Section 7, subdivision 8" (R. p. 81). However, the court below holds that the evidence of judicial notice accepted by the Supreme Court would have been relevant if the act itself could be considered doubtful or ambiguous in meaning, and concludes, that the Supreme Court of Puerto Rico went beyond the permissible limits of interpretation in reading the clause "and shall hold office during good conduct" as meaning that the tenure of office of the City Manager of the Capital is that of four years, provided that during the same he observe good behavior (R. p. 91).

There does not seem to be great consistency between this opinion of the court below as to the propriety of the interpretation placed by the Supreme Court of Puerto Rico on Section 21 of the Act of May 15, 1931, and its statement that "if the court below was correct in its conclusion that appellant's term of office expired at sometime subsequent to its judgment of June 28, 1940 * * *, that court had jurisdiction to stay the execution of its judgment * * *. See Puerto Rican Code of Civil Procedure, Section 7, subdivision 8".

If the Supreme Court of Puerto Rico erred in its interpretation of Section 21 of the Statute, then clearly, under Section 7, subdivision 8 of the Puerto Rican Code of Civil Procedure, as interpreted in the case of *Marvin & Jones Inc.* v. *Torres* and the California cases cited, the court had no jurisdiction to amend its former judgment of June 28, 1940, and the petifioner was deprived of his constitutional right of due process of law.

It appears then that the error committed by the Supreme Court of Puerto Rico was "clear or manifest; the interpretation inescapably wrong; the decision patently erroneous," fully meeting the test set out by this Hon. Court in *Bonet* v. *Texas Co.*, 308 U. S. 463.

Point Two.

The Circuit Court of Appeals erred in holding that the Supreme Court of Puerto Rico could amend its judgment rendered on June 28, 1940, by the second judgment rendered on January 14, 1942, under the provisions of Section 7, subdivision 8 of the Puerto Rican Code of Civil Procedure.

The Court below states in its opinion that the Supreme Court of Puerto Rico went beyond the permissible limits of interpretation in declaring that Section 21 of the Act of

May 15, 1931, should be interpreted to mean that the City Manager of the Capital held office for four years, provided that during the same he observe good behavior. (R. p. 91). However, the court below states that it was not prepared to say that the judgment under review was inescapably wrong. (R. p. 91).

The term "during good behavior" as applying to the tenure of office, is clear and free from all ambiguities. It is contained in article III, Section 1 of the Constitution of the United States which reads:

> The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

It has been held to mean a tenure for life, unless sooner terminated for cause.

> Cf. *Matter of Hennen*, 13 Pet. 230, 258 (1839).
> *Smith* v. *Bryan*, 110 Va. 199, 203; 40 S. E. 652, 653.

The decision of the Supreme Court of Puerto Rico is apparently based on a false misconception regarding Section 21 of the Act, for, whereas the Act is clear and unambiguous in its meaning, the Court attempts to interpret its meaning on the basis of ambiguity or lack of clearness. (See R. p. 39, 41, 42 and 43.).

The Supreme Court of Puerto Rico attempts to draw a parallel between the *De Castro* case and that of *Shurtleff* v. *United States*, 180 U. S. 311, 316 (1903). The court below does not accept the similarity between the two cases. (R. p. 87, 88).

When the petitioner complained to the court below that the Supreme Court of Puerto Rico should not have considered evidence of judicial notice without affording him an opportunity to present other evidence, of judicial notice, or otherwise, the court below intimates that the appellant did not enlighten the court on these matters. The petitioner has always felt that the proceedings before the Supreme Court of Puerto Rico were not original proceedings in which the introduction of evidence was proper. The fact that the Supreme Court made use of judicial notice, as evidence, necessarily limited the petitioner to this class of evidence, when, in an ordinary proceeding, the whole field of evidence would have been open to him to explain the significance of several matters to which the Supreme Court gives importance.

We feel that the court below was not justified in stating that the petitioner had "not undertaken to enlighten" the court on those matters. (R. p. 89 and foot note 4 p. 90). The record shows that in the additional grounds for opposition by the appellant De Castro, two bills that had been before the Senate of Puerto Rico were annexed as Exhibits. These bills, corresponding to the Legislatures of 1936 and 1937 clearly show that the Legislature of Puerto Rico was aware of the fact that the term of office of the City Manager was without limit and the bills were introduced for the purpose of limiting the tenure of office to four years. These bills failed to become law. (R. p. 34, 35, 36). The petitioner also accompanied to the brief before the court below, as an appendix, a certified copy of an opinion by the Attorney General of Puerto Rico, dated January 30, 1937, in which this official states that the term of office of the City Manager is during good behavior, or, in contemplation of the law, for life, unless sooner removed for cause. The court below apparently does not give any weight to this opinion which destroys the conclusion of the Supreme Court of Puerto

Rico to the effect that the petitioner himself had interpreted the statute to mean that his term of office was only for four years. (R. p. 45).

The petitioner has requested the Clerk of the Court below to furnish this Hon. Court with a certified copy of this exhibit.

To further clear up the question of judicial notice, the petitioner attaches, as appendices to this brief a certified copy of Resolution number 243 adopted by the Board of Commissioners of San Juan on September 16, 1936, and also, a certified copy of the Opinion of the Attorney General of Puerto Rico to the President of the Board of Commissioners of San Juan, dated December 8, 1936.

This official resolution of the Board tends to show that the term of office of the former city manager Mr. Benitez Castaño did not end on the first Monday of January 1937 after the general election of 1936, but continued for one hundred and fifty working days after September 12, 1936, or until the 19th of March 1936, as appears from the foot note 4 in the opinion of the Court below. (R. p. 90). The opinion of the Attorney General tends to establish the fact that the Board of Commissioners of San Juan was informed and officially aware that it could not appoint a new city manager after the election of 1936, when the new Board was to take possession, on January 4, 1937, and that according to the opinion the office of city manager did not become vacant until the effective date of the resignation of the city manager Mr. Benitez Castaño, after the lapse of 150 working days from September 12, 1936.

Point Three.

Appeals from judgments of the Supreme Court of Puerto Rico to the Circuit Court of Appeals for the First Circuit are authorized, as a matter of right, by Section 128 of the Judicial Code (28 U. S. C. A. 225).

The Court below should have entertained the appeal and rendered a decision on the merits and not affirmed the appeal on the grounds stated in its judgment.

On the arguments presented under Points One and Two we feel that this case merits revision by this Hon. Court.

The court below is practically in agreement with the petitioner on the question of the grave error committed by the Supreme Court of Puerto Rico in its interpretation of Section 21 of the Act of May 15, 1931. If that court went beyond the scope of its power and attempted to interpret a statute introducing thereto a meaning which was outside of its clear and imperative scope, the Circuit Court should have found that the case at bar met the canons or test set out by this Hon. Court in the *Bonet* case and should have declared the decision of the Supreme Court of Puerto Rico, clearly in error, inescapably wrong and patently erroneous.

The statute which creates the special government for the Capital of Puerto Rico in its Section 21, cannot be the subject of a construction or interpretation that is not derived from its own text since it is a well known rule of construction that when the text of the law is clear there is no need to search another part of the statute for matters, to clarify by interpretation, that which is clear and evident of itself and has been the subject of interpretation by the courts.

Section 388 of the Code of Civil Procedure of Puerto Rico, 1933 Edition, (Sect. 26 Law of Evidence) provides that in the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in term or in substance contained therein, not to insert what has been omitted or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted, as will give effect to all.

"There should be no construction of a statute where the language is clear and comprehensive."
U. S. v. *Wiltberger*, 5 Wheat. 76.

"A statute must be held to mean what the language imports. When it is clear and imperative, reasoning ab inconvenienti is of no avail, and there is no room for construction."
Boudinot v. *U. S.*, 11 Wall. 616.

"Where the language of a statute is transparent and its meaning clear, there is no room for the office of construction; there should be no construction where there is nothing to construe."
Lewis v. *U. S.*, 92 U. S. 618.

"The court is bound by plain and unambiguous language of a statute, and cannot alter the terms and thus enact instead of construe the law."
U. S. v. *Ewing*, 184 U. S. 142.

Section 21 of Act No. 9, of May 15, 1931, is clear and conclusive in its expression. There is no room for construction or interpretation. It may be possible that the Sections of said statute relative to the appointment and terms of office of other officers and employees of the Government of the Capital may not be completely clear. In that event their interpretation might demand judicial inquiry but the present case has nothing at all to do with the appointment and terms of office of anyone but the City Manager and these sections bearing no relation whatsoever to Section 21, consequently, they should not have been examined and construed for the purpose of determining the legislative intent which clearly appears from Section 21 itself.

The mission and duty of courts of justice is not to establish the legislative policy of a state but merely to enforce the statutes approved by legislative authority. This is in harmony with the fundamental principle of constitutional law which upholds the independence of the executive, legis-

lative and judicial branches. From time immemorial the principle has been firmly adhered to.

> "The judicial power is exercised in the decision of cases; the legislative in making general regulations by the enactment of laws. The latter acts from considerations of public policy, the former by the pleadings and evidence of the case."
>
> *Pennsylvania* v. *Wheeling Bridge Co.*, 18 How. 421; 59 U. S. 435.

Conclusion.

It is respectfully submitted that the judgment of the Circuit Court of Appeals for the First Circuit, dated June 14, 1943, is clearly erroneous, and, in upholding and affirming the judgment of the Supreme Court of Puerto Rico of January 14, 1942, the petitioner has been deprived of his right to reinstatement to office without due process of law. The petitioner, therefore, prays that a writ of certiorari in the present case be ordered to issue and the judgment of the Circuit Court be reversed.

San Juan, Puerto Rico, September 3, 1943.

HUGH R. FRANCIS,
Counsel for Petitioner.

GABRIEL DE LA HABA,
Of Counsel.

APPENDIX.

December 8, 1936.

Mr. Rafael Landrón Landrón, President, Board of Commissioners, Government of the Capital, San Juan, Puerto Rico.

SIR:

I acknowledged receipt of your letter of December 2, of this year, in which you request my opinion as to whether the Board of Commissioners of the Capital, elected in the past elections held in this Island can, by virtue of the provisions of article 50 of the law creating the Government of the Capital, appoint a new city manager to take office as soon as appointed, if the person were other than the one now holding office.

You state that the City Manager of the Capital, Mr. Jesús Benitez Castaño, is now enjoying, as appears from Resolution No. 243 approved by the Board of Commissioners of San Juan, which you enclose, a vacation with pay of 150 working days, and by said resolution the resignation of said official is accepted to take effect upon termination of the leave, and that at present Mr. Bolivar Pagán is acting as Manager of the Capital.

I am sorry to inform you with respect to the above inquiry, that this office cannot render the opinion requested by you because of the fact that the members elected to the Board of Commissioners will not be able to take possessions of their offices as such until the first Monday in January, 1937, and it is to this new Board that would correspond the formulation of your consultation, in the event that it might deem the same convenient; therefore considering the inquiry made by you of a hypothetical nature for the reasons stated.

Regarding the subject of inquiry you ask in addition if the Board of Commissioners could appoint a new Manager to take office prior to the expiration of the leave granted to Mr. Benitez Castaño.

I ignore whether in mentioning the Board of Commissioners you refer to the present Board or to that elected in the

past elections. If you refer to the latter your inquiry would be hypothetical as above expressed; if on the contrary you refer to the present Board of Commissioners then I must answer your consultation in the negative, inasmuch as in accordance with Article 24 of the Law of the Capital, in the event of a leave by the City Manager of the Capital, he is replaced provisionally by one of the officers in their order of priority as they appear enumerated in Article 26 of the same law, and as a result of this, having granted a leave to the City Manager Mr. Jesús Benitez Castaño and this official being in the enjoyment of the same, the Treasurer of the Capital Mr. Bolivar Papán is acting as temporary manager and until such time as the office becomes vacant the Board has no authority to appoint a new City Manager before the expiration of the leave granted to Mr. Benitez Castaño. See Section 25 of the law cited.

Yours truly,

B. FERNÁNDEZ GARCÍA,
Attorney General.

EA/RCA/ach/eo

Rafael Cabello, File Clerk of the Department of Justice of Puerto Rico, do hereby certify:—

That the foregoing is an exact and true copy of the opinion rendered by the Attorney General of Puerto Rico to Mr. Rafael Landrón y Landrón, President of the Board of Commissioners of the Government of the Capital, as of December 8, 1936 which is on record in the files of this Department under my custody; and at the request of attorney Gabriel de la Haba I issue this copy which I sign and affix thereto the seal of the Department, on this 13th of November 1942, cancelling thereon internal revenue stamps amounting to one dollar twenty five cents ($1.25).

(Signed) RAFAEL CABELLO,
File Clerk Department of Justice.

Internal Revenue Stamps cancelled in the amount of $1.25.
(SEAL.)

RESOLUTION NUMBER 243

Granting A Leave of Absence to the City Manager Honorable Jesus Benitez Castaño, Accepting the Resignation of His Office; and for other Purposes.

Whereas, the Honorable Jesus Benitez Castaño, City Manager of San Juan, has addressed a letter to this Board of Commissioners dated September 11, 1936, which reads as follows:

> I have the honor of addressing you to inform that I have sent a letter to the Treasurer of the Capital, Mr. Bolivar Pagán requesting him, in accordance with the law which governs us, that he assume the duties of Manager of the Capital beginning tomorrow, and making known to him my decision of requesting from you a leave of absence, at the termination of which you can consider my resignation as City Manager tendered, notwithstanding that I will continue the work of terminating the report of the activities of this government for the year 1935-36, in which I will make a brief review of the work of this administration from September 11, 1931 to date.
>
> I therefore request of you to grant me a leave of absence of 150 working days, with pay, commencing tomorrow, at the end of which term my resignation as City Manager, which I now tender irrevocably, shall take effect.
>
> It seems unnecessary to state to you that if during the term of my leave my appearance is necessary for any matter of the government I will promptly come before you and render any service that may be needed to the Government of the Capital.
>
> Yours truly,
>
> (Sgd.) JESUS BENITEZ CASTAÑO,
> *City Manager of the Capital.*

Whereas, on the same date, September 11, 1936, the City Manager of the Capital, Honorable Jesus Benitez Castaño, sent to this Board of Commissioners the following letter:

As an addition to my previous letter of this date I wish to state that the principal reason that prompted me to request of Mr. Bolivar Pagán, Treasurer of the Capital that he take charge provisionally of the duties and obligations of my office as City Manager of the Capital, and request of you a leave of absence, is, that my physician, Dr. Ramon M. Suarez has recommended a prolonged rest without prejudice of my dedicating a few mements daily to the termination of the annual report corresponding to the year 1935-36 which, as I informed Mr. Pagán and you has great importance for me.

Nevertheless, as upon accepting the office of City Manager, I did so completely determined to fulfill this office until the Tuesday following the first Monday of 1937, (in this case the 4th of January 1937), above all other consideration, including my health, I am ready at any time to assume the duties of my office, if in my judgment before the concession of the leave requested this should be necessary, or in the event that you should deem it necessary to the interest of this administration after granting the same.

Hoping that you can act as soon as possible on my request for the leave requested in the afore mentioned letter of the 11th, I am,

Yours truly,

(Sgd.) JESUS BENITEZ CASTAÑO,
City Manager of the Capital.

Therefore, Be It Resolved by the Board of Commissioners of San Juan:

Section 1.—To grant, as it is hereby granted, to Mr. Jesus Benitez Castaño, the leave of absence requested by him as City Manager, effective from the 12th of September 1936 at the first hour, which will be extended for one hundred and fifty (150) working days, with pay.

Section 2.—To accept, as it is hereby accepted, the resignation presented by Mr. Jesus Benitez Castaño of his office of City Manager of San Juan, effective immediately upon termination of the leave referred to in the previous section.

Section 3.—This Board of Commissioners makes complete acknowledgment of the competent and effective work done by Mr. Jesus Benitez Castaño as Chief Executive of this Administration and wishes at the same time to give a vote of thanks to Mr. Benitez Castaño for the services rendered by him to this Government of the Capital in an honest, conscientious and constructive manner.

Section 4.—In conformity with the provisions of the law that govern this Government of the Capital, by these presents, the Honorable Bolivar Pagán is designated to fulfill the functions of City Manager of San Juan.

Section 5.—This resolution, being of an urgent nature, will take effect immediately after approval.

I, Lino Padron Rivera, Secretary of the Capital,

Do Hereby Certify:—That the preceding is a true and correct copy of the original text of the ordinance approved by the Board of Commissioners of San Juan in the extraordinary session held on September 16, 1936, with the affirmative votes of Manuel San Juan, Angel M. Pesquera, Jaime Sifre Jr., Eudardo R. Gonzáles, and the President Mr. Rafael Landrón y Landrón, as appears from the records in my custody.

As the request of attorney Gabriel de la Haba, I sign these presents and affix thereto the Seal of the Capital, at San Juan, Puerto Rico, this 3rd day of August 1943.

(Sgd.) L. Padrón Rivera,
Lino Padron Rivera,
Secretary of the Capital.

(Seal of the Capital.)

Copy. January 30th 1937

Dr. Carlos M. de Castro City Manager of the Capital San Juan, P. R.

Sir:

I am pleased to acknowledge receipt of your communication of the 9th instant requesting my opinion with respect to (1) the term of the officers and employees of the Capital which were appointed on September 11th 1931; and (2) if the new administration is or is not a continuation of the former.

From your letter it appears that the commissioners elected on the 3rd of November 1936 took possession of their offices on January 4th of the present year.

Your consultation involves the interpretation of various sections of the law establishing a special government for the Capital of Puerto Rico (Law No. 99 of the 15th of May 1931, subsequently amended), to wit:

"Section 9.—The legislative powers conferred by this Act on the Capital shall be exercised by a governmental body which shall be officially known as "Board of Commissioners of San Juan". This Board of Commissioners shall be composed of five members, who shall be appointed by the Governor of Porto Rico, with the advice and consent of the Insular Senate, for the following terms:

One Commissioner for a term of one year;
One Commissioner for a term of two years;
One Commissioner for a term of three years;
One Commissioner for a term of four years;
One Commissioner for a term of five years.

None of the first five commissioners appointed in accordance with this Act shall assume his office until his appointment has been confirmed by the Insular Senate."

"Section 10.—There are also hereby created the offices of City Manager, Treasurer, Director of Public Works, Director of Health and Charities, School Director, Auditor and Secretary of the Capital."

"Section 18.—Subject to other provisions of this Act, the Board of Commissioners shall have, among its other legislative and administrative powers, the following special powers: * * *

(5) To create such positions as may be strictly necessary for the government of the Capital, and to provide the corresponding salaries in the budget; Provided, That the Board of Commissioners may not create any department or office in addition to those herein prescribed; Provided, further, that no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties of such employee, and stating the need of the position for the public service; * * *"

"Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

"Section 25.—When the office of City Manager is vacant, it shall be incumbent upon the Board of Commissioners to designate the person who shall fill said vacancy; Provided, That until the said vacancy is filled, the said office shall be discharged by a member of the Administrative Board, in accordance with the preceding section.".

"Section 26.—The City Manager shall appoint the following officers:

(1) Treasurer of the Capital;
(2) Director of Public Works;
(3) Director of Health and Charities;
(4) School Director;
(5) Secretary of the Capital.

"Section 27.—The Treasurer, the Director of Public Works, the Director of Health and Charities, the School Director, and the Secretary of the Capital may be removed by the City Manager, for just cause, upon hearing and an opportunity to defend themselves either in

person or through attorneys. The following shall be causes for the removal of said officers: Any act of theirs constituting a felony, any act of theirs constituting a misdemeanor and implying moral turpitude; carelessness, or inexcusable ignorance in the performance of their duties, or immoral or incorrect conduct in the exercise thereof."

"Section 36.—The Auditor of the Capital shall be appointed by the Board of Commissioners. This official may be removed by the Board of Commissioners for just cause, after a hearing and an opportunity to defend himself either personally or by attorneys. Causes for removal of this official shall be any act performed by him which constitutes a felony; any act performed by him which constitutes a misdemeanor and implies moral turpitude; carelessness or inexcusable negligence, or immoral and incorrect conduct in the discharge of his office.

The Auditor of the Capital shall have all the powers, functions and duties, as regards the Capital, as are vested in the Auditor of Porto Rico as regards the Insular Government of Porto Rico, subject to the provisions of the Organic Act and to such regulations, not incompatible with this Act, as the Auditor of Porto Rico may prescribe. He shall sign all warrants and orders for the payment of money from the public funds of San Juan, and shall have custody of all the real and personal property of the Capital. It shall be his duty to demand responsibility from all officers or employees of San Juan under whose immediate custody any of the Capital's property may be, and he shall immediately report to the Auditor of Porto Rico and to the Board of Commissioners any damage suffered by any city property.

The Auditor shall issue all payment warrants against funds of the Capital, and together with the Treasurer, shall sign all the checks, drafts, credit certificates and disbursements of the Capital. He shall keep the Capital's accounts with full details of all receipts and expenditures.

The Auditor may prepare, for compliance by the officers and employees of the Capital, regulations on the custody of municipal property, provided such regulations are not incompatible with the provisions of the Organic Act, of this Act, or other laws in force, or of the ordinances and resolutions of the Board of Commissioners, and he may require an adequate bond from all employees whose functions are connected with the collection of public funds. He shall render annually to the Board of Commissioners a detailed and complete report of all municipal property.

The Auditor of the Capital shall be a person competent in public accounting, and shall receive an annual salary of four thousand five hundred (4,500) dollars."

"Section 39.—All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. Said employees shall be appointed for the term for which each officer is appointed. The employees of the Capital may be removed for just cause by the officer appointing them, after a hearing and an opportunity to defend themselves. Any employee may be suspended from office and salary upon the preferment of charges against him by the corresponding official."

"Section 50.—The Board of Commissioners created by this Act shall be elected by popular vote at the general elections to be held in 1936, and every four years thereafter. The Commissioners appointed by the Governor of Porto Rico in accordance with section 9 of this Act shall hold office until the first Monday in January of 1937."

In accordance with the transcribed provisions, and speaking in general terms, the Government of the Capital is composed of a Board of Commissioners, which is the legislative organ, of various administrative officers who constitute the executive and administrative branch, and of those employees that may be necessary for the functioning of said government.

The Board of Commissioners is elected by popular vote every four years, except the commissioners who formed the first board, who were appointed by the Governor of Puerto Rico, with the advice and consent of the Senate and for a term which expired the first Monday of January 1937, having taken possession on this date those commissioners elected in the elections held on the 3rd of November 1936.

The appointment of the City Manager is incumbent upon the Board of Commissioners whenever said office becomes vacant, as well as the auditor of the Capital, and also the creation of such positions as may be strictly necessary, and the incorporation in the budget of the corresponding salaries. The Administrator of the Capital in turn is authorized to appoint the administrative officers, with the exception of the auditor, and to these officers correspond the appointment of the employees pertaining to their departments whose positions may have been created previously by ordinance or resolution of the Board of Commissioners.

With the exception of the term of four years which is established as the term of duration of the office of Commissioner, the law does not establish the term of duration with respect to other officers and employees of the Government of the Capital. With regard to the City Manager it is provided in Article 21 supra that he will fulfill his office during good behaviour, and with respect to the other administrative officers nothing is provided in the law, although in article 39 it is provided that the employees appointed by the Administrative officers will discharge their duties for the same term of appointment of each of such officers.

It is the general doctrine that discharge of the duties of an office or public employment is for a definite term, or while the officer and employee observe good conduct (during good behaviour), or at the will or discretion (at pleasure) of the nominating authority, unless its power to separate or discharge is limited by the law.

> "Officers and persons in public position hold, first, for a definite term; second, during good behavior; or, third, at the will or discretion of some officer or department * * * A definite term is where the law so prescribes, which may be by statute, or the organic law of

the state. 2 McQuillin Municipal Corporations, 2d Ed., p. 163."

"All offices, the tenure of which is not fixed by the Constitution or limited by law, must be held either during good behavior, or (which is the same thing in contemplation of law), during the life of the incumbent." In the matter of *Duncan N. Hennen*, 38 U. S. 202-227."

"A provision in the charter that the appointees of a certain department shall hold office during good behavior was construed to mean that such appointees shall hold office during good behavior not to exceed the limit fixed by the Constitution." *Stuart* vs. *Ellsworth*, 75 Atl. 59; McQuillin Municipal Corporations, second edition, p. 170, sec. 508 (488).

"Ordinarily in the absence of any constitutional restrictions there is no inherent objection under the American form of government to the creation of public offices with the tenure of good behavior." 22 Ruling Case Law, p. 551.

"If no definite term exists and the law does not otherwise provide, the tenure is at the will of the authority which confers the office, and unless restrained by law, the power which appoints may remove." 2 McQuillin Municipal Corporations, 2nd. Ed., p. 171.

"If no definite term is prescribed, and in the absence of legal restrictions, including civil service regulations, the incumbent holds subject to discharge at any time." 2 McQuillin Municipal Corporations, 2d. Ed., p. 172.

"When the term of tenure of a public officer is not fixed by law, the general rule is that the power of removal is incident to the power to appoint. The tenure not having been declared by law, the office is held during the pleasure of the authority making the appointment. Hence in the absence of all constitutional or statutory provision as to the removal of public officers the power of removal is considered as incident to the power of appointment." 22 R. C. L. p. 562.

"The power of appointment generally carries with it, as an incident, the power to remove, but the power of removal may be impliedly or expressly restricted by constitutional provisions or statute, and the general

rule does not apply when a definite term is attached to an office by law, or where it is provided that the officer shall hold during good behavior." 46 C. J. 985.

"Where the constitution provides that appointive officers may be removed at the pleasure of the power by which they shall have been appointed, they are removable at the pleasure of the appointing power, notwithstanding the legislature has fixed a definite term of service * * *." 46 C. J. 985.

"Where the power of removal is limited to specific causes, the removing authority may not remove for any cause not so specified. It is sometimes provided by the constitution or statute that removal shall be had for 'cause' or 'only for cause', and it is generally held that, in the absence of provisions to the contrary, officers appointed for a definite term, or to hold during good behavior, are removable only for 'cause', even though it is not so provided by statute. However, unless restricted by positive provisions of the law, the power of appointment generally carries with it, as an incident, the power to remove, at the pleasure of the appointing power, officers not holding under a term fixed by law * * *." 46 C. J. 985-986.

The law which we are now interpreting does not contain any provision authorizing the discharge of officers at the will of the nominating authority. On the contrary it limits its faculties of separating a public officer or employee from his office or employment, establishing on the contrary that the discharge must be for just cause, hearing, and opportunity for defense, personally or through an attorney at law. The City Manager may be discharged by the Board of Commissioners for the following reasons:

For any act committed by him which constitutes a grave offense (felony); any act committed by him that constitutes a minor offense (misdemeanor) and implies moral turpitude, abandonment, inexcusable negligence in the discharge of his duties or immoral or incorrect conduct in the discharge thereof. The auditor of the Capital, like the City Manager, may be discharged by the Board of Commissioners for the same causes as the other administrative officers.

Employees may be discharged by the appointing officer, for just cause, hearing, and opportunity of defense.

It results from what has been heretofore stated that the Commissioners discharge the duties of their office for a definite term of four years and that the city manager discharges his duties during good behavior, that is to say, with the character of a life tenure. It also appears that the power of discharge is limited and regulated by law and that, therefore, no other public officer or employee of the Capital discharges the duties of his office at the will of the person appointing him.

With these circumstances in view, do the appointments of the officers and employees made in September 11th 1931 upon the inauguration of the new system of government for the Capital of Puerto Rico participate of the nature of a life tenure? We are inclined to decide that it was the intention of the legislator to give such a character to said offices and position, more so, when the law does not fix a definite term of duration and limits the discharge to certain causes and to certain procedure.

Apart from these another reason exists which sustains our conclusion, and this is, that the administrative officers of the capital are not agents of the City Manager or of the Board but of the political and juridic corporation known as the Capital of Puerto Rico.

> "Though a public employment be without term and at will it does not necessarily follow that it is conterminous with the expiration of the term of office of the appointment power. To do so the employment must create the relation of principal and agent between the appointing power and the appointee. This situation is best illustrated in the case of deputies to executive officers where the courts have held that a deputy is a mere adjunct of the appointing power and hence his employment or term of office ceases with the expiration of the term of office of the appointing power. A deputy is defined as one 'who by appointment exercises an office in another's right, having no interest therein but doing all things in his principal's name and for whose misconduct the principal is answerable.' 9

A. & E. Ency. L. 369. 'A Deputy * * * is in law deemed an agent.' Story on Agency, Sec. 149, note, cited in *Harring* v. *Lee*, 22 W. Va. 661, 667. Hence the term of office of the deputy, upon principles of agency, is conterminous with the expiration of the office of his principal. (See *Greenwood* v. *The State*, 17 Ark. 332, 338, *Wilson* v. *Russell*, 31 N. W. (Dak.) 645, 650; *Boardman* v. *Halliday*, 10 Paige (N. Y.) 223, 230; *Hord* v. *State*, 70 N. E. (Ind.) 916, 922 and cases cited." *Ahia* v. *Cain*, 27 Haw. 770.)

"This statute does not in terms fix any specified period during which an appointment to the office of superintendent of the poorhouse and farm continues. But the same is also true of the offices of deputy clerk and deputy sheriff, the appointments to which continue during the pleasure of the clerk or the sheriff making the appointment. Yet it has never been doubted, so far as we are aware, that the term of a deputy sheriff or deputy clerk ends by operation of law with the term of the sheriff or clerk by whom he was appointed. The clerk and sheriff being charged with the general responsibility for the conduct of their respective offices, it is so plain that a deputy appointed by a predecessor should not hold over it was deemed unnecessary to say that the term of the deputy should end with the term of the clerk or sheriff who appointed him. So it is with the office of superintendent of the poorhouse and farm. The county board of commissioners are by law made responsible for the general supervision of the poorhouse and farm of the county, and it was never intended that the subordinate officer, appointed by them for the superintendence of the institution should have a longer term than those by whom he was appointed. The statutory scheme of general supervision by the board and subordinate supervision by the superintendent repels the idea of one board having the power to impose a superintendent on a succeeding board." *Sanders* v. *Belue*, 58 S. E. 764.

This doctrine dispels any doubt that may exist on the question that if by reason of the resignation of the former

City Manager Mr. Jesús Benitez Castaño, all the Administrative officers appointed by him ceased in the discharge of their duties.

Although true that the City Manager, as Chief Executive of the Government of the Capital, has the direction and general superintendence of all the officers of the Capital, as well as the inspection and superintendency of all public services, the administrative officers have powers and duties delegated to them by law which they exercise, not as agents of the City Manager, but as agents of the public corporation known as The Capital of Puerto Rico. The City Manager is not responsible for the negligence of said public officers in the discharge of their duties, but the corporation is, and therefore, said officers are not agents of the City Manager but his auxiliaries (adjuntos) in the current and ordinary sense of the word.

Finally we must bear in mind that the system of government of the Capital was adapted from the system in use in various States of the United States, of which the city of Dayton, Ohio, is a typical example.

This system of government (Council Manager system) requires men of experience in municipal functions that can manage efficiently all the services for the common beñefit. In order to obtain this class of officers the establishment of the administrative profession is necessary, and for this purpose it is in turn required that municipal offices should not have a definite term of duration, that the officers be appointed instead of being elected, and that they favor a non partisan administration.

By virtue of the foregoing it is my opinion that the administrative officers of the Capital appointed September 11th 1931, upon the inauguration of the new system of government for the Capital, and to whom the law does not fix a definite term of duration, were appointed during good behavior, are not subject to separation at the will or discretion of the City Manager but only for the causes specified in the law through charges, hearing, and opportunity of defense, personally, or by means of an attorney at law.

Applying the principles outlined in the course of this opinion to the employees of the Capital of Puerto Rico, referred to in Article 39 of the law, we understand that these

employees cease in their employment upon the ceasing of the officer who appointed them, for the reason that generally, said employees are in fact the agents through which the administrative officer exercises the powers, prerogatives and duties assigned to him by law, and these officers are responsible for the negligence of their employees in the discharge of their duties. Their positions are the creation of the Board of Commissioners which in turn fixes the powers and duties of their employment, the salary of the employee, and the necessity of the position for the public service.

> "The specific period may be inferred from the nature of the office and the duties of the officer. For example, when an inferior office is created, the tenure may be implied to be the same as that of the superior office to which the inferior is an adjunct. Such an implication is especially strong when the inferior officer is charged with minor matters; the general supervision and responsibility devolving on the superior officer." *Sanders* v. *Belue*, 58 S.E. 764.

In deciding the preceding question in this manner I have been guided by the majority rule which is condensed in the following paragraph taken from 70 A.L.R. 799, to wit:

> "In most jurisdictions where a board appoints an officer, or contracts for services, and the duties of the officer or the services to be rendered are duties delegated to the supervision of the board, such appointment or contract for a period beyond the term of the board is not valid. And the same rule applies to confidential relations, such as counsel for the board."

With regard to your other inquiry as to whether the nine commissioners and administrative officers of the Capital who took possession of their offices on the 4th of January of this year are or are not a new administration, distinct from the former, I must inform you that in my opinion the Board of Commissioners is a continuing body that does not change even though the commissioners change. The same is applicable to the administrative board.

"There was no act constituting fraud in the execution of the contract alleged (one for teaching service) making the only question one of power of the board to make such a contract. The district school board is a corporation representing the district. It is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its individual members. An essential characteristic of a valid contract is that it is mutually binding upon both the parties to it." *Taylor* v. *School District*, 47 Pac. 758.

Respectfully,

B. FERNANDEZ GARCIA,
Attorney General.

I, Rafael Cabello, File clerk of the Department of Justice of Puerto Rico, Certify:

That the preceding is a true and exact copy of the opinion rendered by the Attorney General of Puerto Rico to Dr. Carlos M. de Castro, City Manager, on January 30th 1937, which appears on the files of this Department under my custody; And at the request of Gabriel de la Haba, Esq. I issue this copy which I sign and seal with the seal of the Department, this 13th day of November 1942, cancelling Internal Revenue stamps for five dollars and seventy-five cents ($5.75).

(Sgd). RAFAEL CABELLO,
File clerk, Department of Justice.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

Certiorari to the United States Circuit Court of Appeals, First Circuit, to Review Judgment Affirming Judgment of Supreme Court of Puerto Rico Staying Execution of Latter Court's Prior Judgment Directing Reinstatement of Petitioner as City Manager.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals, First Circuit, rendered June 14, 1943, to which the present writ is directed, appears in Volume 136, Federal Reporter, 2d Series, beginning on page 419, and in the record on pages 80 to 93.

The opinion of the Supreme Court of Puerto Rico, rendered January 14, 1942, to which the opinion above mentioned directly relates, is not yet officially reported in English, but the English text appears in the record on pages

36 to 46, and the Spanish version is in Volume 59 *Decisiones de Puerto Rico*, beginning at page 676.

The opinion of the District Court of San Juan, rendered August 21, 1939, sustaining the action of the Board of Commissioners in removing the petitioner from office is not officially reported, but may be found in the Transcript of Record filed in this Court in *Board of Commissioners v. de Castro*, No. 94, October Term, 1941, pages 38 to 45.

The original opinion of the Supreme Court of Puerto Rico, rendered June 28, 1940, reversing the District Court of San Juan, and directing petitioner's reinstatement, is reported in Volume 57 *Puerto Rico Reports*, pages 149 to 159, and is in the record on pages 1 to 11.

The opinion of the United States Circuit Court of Appeals, First Circuit, rendered January 10, 1941, affirming the opinion last above mentioned, appears in Volume 116 Federal Reporter, 2d Series, at page 806. Certiorari denied October 13, 1941, 314 U. S. 614.

JURISDICTION.

This Court manifestly has jurisdiction by virtue of Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. 347).

This Court granted certiorari on February 28, 1944 (R. 94).

QUESTIONS PRESENTED.

1. Does the rule of the respect to be accorded decisions of Territorial courts on matters of local law require the Circuit Courts of Appeals in reality to abdicate the jurisdiction over appeals from those courts in such cases vested in them by the Congress by the Judicial Code?

2. Is the statutory term of office of the City Manager of San Juan "during good conduct" a term for life pending good conduct, or a term only for a fixed four year period pending good conduct?

3. In this case was not the judgment of the Puerto Rican Supreme Court granting a permanent stay of execution of its prior judgment, which had directed reinstatement of this petitioner, clearly and manifestly erroneous and even "patently" so, and "inescapably wrong", within the meaning of this Court's decision in *Sancho Bonet* v. *Texas Company*, 308 U. S. 463, 471?

STATEMENT OF THE CASE.

Note: As we must refer to both the record filed here in connection with the Respondent Board's unsuccessful petition for certiorari in 1941 (No. 94, October Term, 1941), and that filed in the present proceedings, we shall hereinafter cite the former record as "FR", and the present one as simply "R").

On January 4, 1937, Petitioner Carlos M. de Castro was appointed city manager of the Capital of Puerto Rico (City of San Juan), by the Respondent Board of Commissioners (hereinafter called the Board), pursuant to section 21 of Act No. 99, Laws of Puerto Rico, 1931, page 639, (Appendix A, *infra*, p. 44), which prescribes *inter alia* that the city manager "shall hold office during good conduct" (FR 1, 30).

On November 9, 1938, the Board lodged against the petitioner certain charges comprising nineteen counts of alleged official neglect or misconduct (FR 2-3, 46-54). The petitioner having answered denying both generally and in specific detail each and all of the adverse allegations, hearings on the charges were begun before the Board on November 21, 1938 (FR 4-5, 30).

On January 5, 1939, while its hearings were still in progress, the Board adopted its Resolution No. 370, suspending the petitioner from office pursuant to Section 23 of said Act (FR 4-5, 30; Appendix A, *infra*, p. 45).

On April 5, 1939, after having completed the hearings on February 17, 1939, the Board adopted its Resolution No. 373, sustaining four of the negligence counts, and purporting to remove the petitioner from office effective retroac-

tively to January 5, 1939, pursuant to Section 22 of said Act (FR 6-9, 30; Appendix A, *infra*, p. 44).

On April 11, 1939, the District Court of San Juan granted certiorari (FR 15-16), and after hearing rendered opinion and judgment August 21, 1939, sustaining the Board, dismissing the petition and annulling the writ on the grounds in substance that there was at least some evidence to support two of the counts, and that the Court was without power in such case to set aside the findings or action of the Board (FR 38-46).

Appeal was taken to the Supreme Court of Puerto Rico, where, on June 28, 1940, opinion was rendered holding the removal of the petitioner to have been unlawful (R. 1-11), and judgment was entered as follows (R. 11):

> "For the reasons set forth in the foregoing opinion, the judgment appealed from, which was rendered by the District Court of San Juan on August 21, 1939, is hereby reversed, and in its stead a new one rendered annulling Ordinances No. 370, of January 5, 1939, and No. 373, of April 5, 1939, which decreed the suspension and removal of the City Manager, and, in consequence thereof, ordering the reinstatement of the petitioner, Carlos M. de Castro in his office of City Manager, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay."

The Board appealed to the United States Circuit Court of Appeals, First Circuit, which on January 10, 1941, affirmed the judgment of the Supreme Court of Puerto Rico. *Board of Commissioners* v. *de Castro*, 116 F. (2d) 806. This Court denied certiorari on October 13, 1941 (314 U. S. 614), and the Circuit Court of Appeals transmitted its mandate to the Supreme Court of Puerto Rico, where it was received on or before October 27, 1941 (R. 37).

Meanwhile, the Board in its brief in the Puerto Rican Supreme Court, not only did not advocate its present theory of a four-year term, but actually took an exactly contrary view, expressly construing Section 21 of Act No. 99 precisely as it has been construed by the present petitioner

throughout these proceedings, to the effect that the office of city manager is one for life pending good behavior, and not one for any fixed term (R. 50), and in its statement on appeal filed in the Circuit Court of Appeals on November 25, 1940, the Board did not make any mention whatever of its present contention that petitioner's term of office was for only four years, although the expiration of that period was then only a few weeks away, and would obviously occur long before the mandate on any final judgment in that court could be received in the Supreme Court of Puerto Rico. Nor was that contention advanced by the Board in either its petition for rehearing filed in the Circuit Court of Appeals on February 10, 1941 (FR 242), some weeks after such expiration, or its petition for certiorari filed in this Court on May 20, 1941 (No. 94, Oct. Term, 1941), more than four months after such expiration.

However, on October 27, 1941, soon after receipt of the mandate by the Supreme Court of Puerto Rico, the Board filed in that Court its motion advancing that contention for the first time in these proceedings, and praying for stay of the execution of the judgment of June 28, 1940, insofar as it provides for reinstatement of the petitioner in the office of city manager, on the alleged ground that petitioner's tenure of that office had expired in January, 1941 (R. 12-18).

The Supreme Court of Puerto Rico, treating the issue thus presented as a new one of mixed law and fact within its original jurisdiction, and taking judicial notice of a few isolated and fragmentary facts as a basis for its conclusion, without affording or being legally empowered to afford the petitioner any opportunity for the presentation of evidence in that Court not subject to judicial notice, proceeded to construe the plain and unambiguous language of Section 21 of the Act providing that the city manager "shall hold office during good conduct", in harmony with the Board's contention, and on January 14, 1942, entered its opinion and judgment accordingly, ostensibly "staying the execution"

of the reinstatement part of its prior judgment of June 28, 1940, but in practical effect striking out the reinstatement provision of that judgment and thus amending it in a vital particular (R. 36-46).

Petitioner's motion for reconsideration having been denied by the Supreme Court of Puerto Rico without further hearing or formal opinion (R. 47-66), appeal was taken to the Circuit Court of Appeals, which rendered on June 14, 1943, the opinion and judgment now before this Court for review, holding in substance that the opinion of the Supreme Court of Puerto Rico is erroneous in every vital particular, but nevertheless affirming the judgment for the sole reason that such affirmance is considered compulsory under the doctrine laid down by this Court in *Sancho Bonet v. Texas Co.*, 308 U. S. 463, 471.

SPECIFICATION OF ERRORS URGED.

The petitioner urges each and all of the errors assigned in his petition for writ of certiorari (p. 8), as follows:

1. The Circuit Court of Appeals erred in holding that under the Puerto Rican Code of Civil Procedure, Section 7, Subdivision 8, the Supreme Court of Puerto Rico could amend its prior judgment of June 28, 1940, so as to interpret the clear context of Article 21 of Act No. 99 of the Legislature of Puerto Rico and limit the petitioner's right to office, from that of tenure during good behavior to a four year term, thereby sanctioning a departure by the Insular Court from well established, accepted and usual judicial proceedings.

2. Though the Circuit Court of Appeals found that the lower court "went beyond the permissible limits of interpretation" in holding that the term of office of the petitioner was that of four years instead of during good behavior, as provided in Section 21 of the Statute, nevertheless, the judgment of the lower court is affirmed because the appellate court was not prepared to hold that such interpretation is "inescapably wrong", notwithstanding that the error of the lower court was clear or manifest and its decision patently erroneous.

3. The Circuit Court of Appeals places an unduly strict, limited and harsh interpretation on the decision in *Sancho Bonet* v. *Texas Co.*, 308 U. S. 463, 471, thereby enjoining all appeals from the Supreme Court of Puerto Rico, which are expressly authorized by Section 128 of the Judicial Code of the United States (28 U. S. C. A. 225), as a matter of right, when the interpretation of, or action under a local Puerto Rico law is involved.

ARGUMENT.

SUMMARY.

I. The Circuit Court of Appeals has erroneously exaggerated the force and effect of the expressions "inescapably wrong" and "patently erroneous" employed by this Court in the *Sancho Bonet* case, *supra*, apparently construing them to bar reversal of the Puerto Rican Supreme Court in any matter of local law where the judgment of that Court, although regarded as erroneous, can be supported on any theory whatever, no matter how strained and illogical; whereas, as petitioner understands, this Court by those expressions meant only to emphasize and not to enlarge the force and effect of its long-established rule and its immediately preceding statement that "to justify reversal in such cases, the error must be clear or manifest." (See Point I, *infra*, p. 8.)

II. The judgment of the Circuit Court of Appeals is erroneous and should be reversed by this Court, because the judgment thereby affirmed (rendered on January 14, 1942, by the Supreme Court of Puerto Rico, holding petitioner's term of office had expired and staying the execution of the reinstatement provision of its prior judgment of June 28, 1940), is clearly and manifestly erroneous—even "patently" so and "inescapably wrong"—within the meaning of the opinion of this Court in the *Sancho Bonet* case, for the following reasons:

A. With relation to the tenure of the office of city manager, Section 21 of Act 99 is too clear and free from ambiguity to admit of the recourse had by the Puerto Rican Supreme Court to extrinsic aids for its interpretation. It obviously means simply what it says, that is, "during good conduct", or in other words, for life subject to possible resignation or removal on notice and hearing for misconduct. See Point II A, *infra*, p. 20.

B. Upon its own theory to the effect that resort to extrinsic aids for the interpretation of said Section 21 with respect to the question of the term of office was justified and necessary, including the consideration of certain factual aspects, the Puerto Rican Supreme Court plainly and manifestly erred still further in undertaking as the case then stood to pass upon that question, and in not remanding the case to the court of first instance, where the question could have been tried and adjudicated in a forum empowered to receive and consider all of the pertinent evidence, not merely the few isolated facts of which judicial notice could be taken. See Point II B, *infra*, p. 24.

C. Even if it should be held that the Puerto Rican Supreme Court did not err manifestly in resorting to extrinsic aids in the interpretation of Section 21, or was not inescapably wrong in so doing, nevertheless that court was plainly, manifestly and inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered (especially the isolated facts judicially noticed), as well as in its ultimate conclusion that the section prescribes a term of four years. See Point II C, *infra*, p. 27.

D. The judgment of January 14, 1942, although phrased as a stay of execution, amounts in practical effect to a substantial amendment of the prior judgment in a vital judicial particular, thus exceeding the jurisdiction of the Court. See Point II D, *infra*, p. 36.

POINT I.

The Circuit Court of Appeals erred in holding its appellate jurisdiction over judgments of the Puerto Rican Supreme Court on matters of local law to be "pretty much of a dead letter".

The Circuit Court of Appeals places an unduly strict, limited and harsh interpretation on the opinion of this Court in the case of *Sancho Bonet, Treasurer*, v. *Texas Co.*, 308 U. S. 463, 470-472, and the earlier case of *Sancho Bonet, Treasurer*, v. *Yabucoa Sugar Co.*, 306 U. S. 505, 506-511.

A. The opinion of the Circuit Court of Appeals reflects a misunderstanding by that Court of the decisions of this Court in those and earlier cases with reference to the respect to be paid by the circuit courts of appeals, and by this Court, to decisions of Territorial courts of last resort dealing with local Territorial law.

The Circuit Court of Appeals has further reflected its misunderstanding of this Court's decisions in those cases by the adoption of a rule of practice,—its "Rule 39(b)," adopted in the revision of its rules effective September 20, 1940, nine months after this Court's decision, January 2, 1940, in *Sancho Bonet, Treasurer*, v. *Texas Company, supra*. A copy of that Rule 39(b) is in the margin.[6]

THE RULE IN QUESTION.

[6] Rule 39(b) of the First Circuit Court of Appeals, adopted in the Revision of that Court's Rules effective September 20, 1940,—nine months after this Court's decision, January 2, 1940, in *Sancho Bonet, Treasurer*, v. *Texas Company*, 308 U. S. 463, 470-472,—reads as follows:

> "(b) In appeals from the Supreme Court of Puerto Rico involving only questions of local law the appellant shall be required to show in his statement on appeal that the judgment appealed from is 'inescapably wrong' or 'patently erroneous'. (*Sancho Bonet* v. *Texas Co.*, 308 U. S. 463 (1940)). The court will entertain a motion by the appellee to affirm on the ground that it is manifest from the record and the statement on appeal that the judgment below was neither 'ines-

This Court did not in the *Sancho Bonet* v. *Texas Company* case, or in the *Sancho Bonet* v. *Yabucoa Sugar Company* case, indicate any intention to change in any way the rule in that respect that had been unvaryingly recognized and enforced by this Court for more than sixty years previously, alike in cases coming from the old Territories within the continental United States, and also since 1898, from Hawaii, the Philippines, and Puerto Rico.

B. The positive and emphatic language of this Court in the *Sancho Bonet* v. *Texas Company* case, *supra*, 308 U. S. 463, 470-472, is to be read in connection with all the surrounding circumstances of that case, and with this Court's opinions in the *Yabucoa Sugar Company* case and the other cases.[7]

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capably wrong' nor 'patently erroneous', and consequently should not be disturbed by this court. Such motion, which may be united in the alternative with a motion to dismiss the appeal, may be filed within twenty days after the filing and serving of the statement on appeal. A brief in support thereof may be filed and furnished in the manner specified by Rule 25. The court may, however, upon its own motion, dismiss the appeal or affirm the judgment appealed from where the law and justice of the case so require; or, if the case is of such character as not to justify extended argument, the court may order the cause set down for immediate hearing."

[7] *Confer: Sweeney* v. *Lomme*, *supra*, 22 Wall. 208, 213; *Northern Pacific R. R. Co.* v. *Hambly*, 154 U. S. 349, 361; *Fox* v. *Haarstick*, 156 U. S. 674, 679; *Armijo* v. *Armijo*, 181 U. S. 558, 560-561; *Copper Queen Consol. Min. Co.* v. *Territorial Board of Equalization*, 206 U. S. 474, 479; *Lewis* v. *Harrea*, 208 U. S. 309, 314; *English* v. *Arizona*, 214 U. S. 359, 361; *Santa Fe County* v. *New Mexico*, 215 U. S. 296, 305; *Albright* v. *Sandoval*, 216 U. S. 331, 339; *Lewers & Cooke* v. *Atcherly*, 222 U. S. 285, 294; *Treat* v. *Grand Canyon R. R. Co.*, 222 U. S. 448, 452; *Ker & Co.* v. *Couden*, 223 U. S. 268, 279; *Clason* v. *Matko*, 223 U. S. 646, 653; *Gray* v. *Taylor*, 227 U. S. 51, 57; *Cordova* v. *Folgueras*, 227 U. S. 375, 378-379; *Phoenix R. R. Co.* v. *Landis*, 231 U. S. 578, 579-580; *Santa Fe C. R. Co.* v. *Friday*, 232 U. S. 694, 700; *Nadal* v. *May*, 233 U. S. 447, 454; *Villanueva* v. *Villanueva*, 239 U. S. 293, 298-299; *Diaz* v. *Gonzalez*, 261 U. S. 102, 105-106; *Fernandez* v. *Ayllon*, 266 U. S. 144, 146; *Matos* v. *Alonso Hermanos*, 300 U. S. 429, 432; *Waialua Co.* v. *Christian*, 305 U. S. 91, 109; *Inter-Island Co.* v. *Hawaii*, 305 U. S. 306,

In that *Texas Company* case the Texas Company had brought an action in a Puerto Rican insular District Court to enjoin the Treasurer of Puerto Rico, Rafael Sancho Bonet, from enforcing by distraint orders of the Puerto Rico Workmen's Relief Commission awarding compensation for the deaths of three laborers while in the company's employ. The Supreme Court of Puerto Rico interpreted the local Workmen's Compensation Act as not permitting such a collateral attack by injunction on orders of the Commission, and affirmed the District Court's judgment dismissing the bill. (52 P. R. Dec. 658; 53 P. R. Dec. 475; 52 P. R. Rep. 637; 53 P. R. Rep. 452.) On appeal the Circuit Court of Appeals for the First Circuit vacated that judgment and remanded the cause with directions to issue the injunction [102 F. (2d) 710]. This Court granted *certiorari* because (308 U. S., *supra*, at p. 465),

> "of the asserted violation by the Circuit Court of Appeals of the well established rule that Puerto Rican tribunals must not be overruled on their construction of local statutes in absence of 'clear or manifest error'. *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505; 307 U. S. 613."

This Court reviews (at pp. 465-470) the opposite positions in that case of the two Courts,—the insular Supreme Court on the one hand, and the Circuit Court of Appeals on the other hand, and concludes (pp. 471-472):

> "In concluding that under Section 9 an uninsured employer could have an award of the Commission reviewed, including the issue of whether or not he was insured, the Supreme Court of Puerto Rico did not take a patently absurd position. The most that can be said is that the contrary position is a tenable one. In holding that the amendments substituted collection by the

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311; *all leading up to the emphatic statement of the same rule in Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co., supra*, 306 U. S. 505, 509-511; *and in Sancho Bonet, Treasurer* v. *Texas Co., supra*, 308 U. S. 463, 470-472, and afterwards in *People of Puerto Rico* v. *Rubert Hermanos, Inc.*, 315 U. S. 637, 646.

Attorney General even in case of pending claims, that tribunal did not commit manifest error. The conclusion that the latter procedure survived the amendments is merely another possible view. And the decision of that tribunal that the petitioner had the power to distrain cannot be said to be inescapably wrong in view of the legislative design to leave no *hiatus* in the statutory scheme as a result of cumulative amendments. The contrary conclusion, though it might seem wholly reasonable, would not warrant a reversal."

Under those circumstances, and coming to those independent conclusions on the merits of the case, this Court took occasion to repeat and re-emphasize the rule, which it had been announcing from time to time for more than sixty years, of the respect to be accorded to the decisions of Territorial courts on local matters. It said (*ib.*, pp. 470-471):

"For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co., supra*, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this court recently stated, 'Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.' *Bonet* v. *Yabucoa Sugar Co., supra*, p. 510.

"We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several

possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

"Measured by such a test the judgment of the Supreme Court of Puerto Rico should not have been reversed."

C. The *Yabucoa Sugar Company* case (*Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co., supra*, 306 U. S. 505) was another case where this Court carefully considered the case on its merits and really determined that the Circuit Court of Appeals was wrong, and that the Supreme Court of Puerto Rico was right, wholly independently of the question of the respect to be accorded to a decision of a Territorial court of last resort.

That was a suit against the Treasurer of Puerto Rico for a tax refund of taxes that had been paid voluntarily and without protest. This Court notes (at p. 506): "By construction of the local Puerto Rican statutes permitting suits for refunds, the local District Court found that no right had been granted to sue at law for taxes voluntarily paid". The District Court's consequent dismissal of the bill was affirmed by the Supreme Court of Puerto Rico, but was reversed by the Circuit Court of Appeals by a divided Court [98 F. (2d) 398, 400, 403], each of the three Circuit Judges handing down his own separate opinion, two of them concurring in the result, but the third dissenting. This Court's opinion carefully examines the complicated local tax statutes involved, and concludes that the plaintiffs were not entitled to recover the refund for these taxes thus voluntarily paid,—that is, that the insular Supreme Court's decision was right, and that the majority opinion of the Circuit Court of Appeals was wrong (at pp. 506-509).

Having thus independently come to this conclusion, this Court then in this *Yabucoa Sugar Company* case (at pp. 509-511) proceeded,—as it did afterwards in the *Sancho*

Bonet v. *Texas Company* case, *supra*,—again to call attention to the applicability in Puerto Rico of its long standing rule of the respect to be accorded to decisions of local Territorial courts of last resort in local territorial matters, saying:

> "And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute and to sustain such a construction in the absence of clear or manifest error.
>
> "Taxing acts of Puerto Rico are purely local and the traditional reluctance of this Court to overturn constructions of such local statutes by local courts is particularly applicable to interpretations of Puerto Rican statutes by Puerto Rican tribunals. Orderly development of the governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.
>
> "The judgments of the Puerto Rican courts in this case are not unsupported by logic or reason." * * *.
>
> "In passing upon a previous construction of a Puerto Rican statute by the Supreme Court of Puerto Rico, this Court said, 'The construction adopted in Porto Rico at least does no violence to the words of the statute; it concerns local affairs under a system with which the court of the Island is called on constantly to deal, and we are not prepared, as against the weight properly attributed to the local decision to say that it is wrong'.[8] So here, we cannot say the Puerto Rican courts were wrong. In failing to uphold their construction of the local statutes, the Circuit Court of Appeals was in error."

D. Earlier cases in which this Court had enunciated this rule are collected in the margin, as above indicated (Foot-

[8] Citing (in its footnote 19) *Cordova* v. *Folgueras*, *supra*, 227 U. S. 375, 378, 379.

note 7, *ante*, p. 10); and a few of the cases in which it has been cited by circuit courts of appeals are in the margin here.[9]

A memorandum of these various cases in this Court is in Appendix F, *infra*, pp. 63-78.

E. Examination of all of these cases shows that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court. And has never indicated any understanding that its rule, consistently enunciated over the years, for some seventy years now,—ever since 1874,—of the respect to be accorded to decisions of local Territorial courts on local matters, meant that this Court, or the circuit courts of appeals, should abdicate the statutory jurisdiction vested in them by the Congress to review judgments of the Territorial courts, or should so far subordinate their own independent opinions to those of the Territorial courts, even on local Territorial matters, as to subscribe to any decision they considered wrong.

F. The statutes of the Congress vesting the jurisdiction in this Court and in the Federal Courts of Appeals are enacted pursuant to the Constitutional plenary power vested in the Congress by Article IV, Section 3, Clause 2, of the Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States", under which all of the Territorial courts,—and indeed the entire Territorial governments,—are but the agencies of the Congress and wholly subject to its will.

This rule is only that, in cases presenting two or more practical solutions of a local problem, where the

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[9] *Confer: Richardson* v. *Fajardo Sugar Co.*, 237 Fed. 195, 196; *Loiza Sugar Co.* v. *People of Puerto Rico*, 57 F. (2d) 703, 706; *Porto Rico Coal Co.* v. *Domenech*, 41 F. (2d) 183, 185-186; *Russell & Co.* v. *Sancho Bonet, Treasurer*, 92 F. (2d) 821, 822; *Hawaii Consol. Co.* v. *Borthwick*, 105 F. (2d) 286, 288; *Walker* v. *O'Brien*, 115 F. (2d) 956, 957.

Territorial court has arrived at a solution "not unsupported by logic or reason",[10] it is not to be overturned, in view of the respect properly to be accorded to the decisions of local courts upon matters primarily of purely local concern.

G. That is the rule to be deduced from an examination of all of the cases, collected in Appendix F (*infra*, pp. 63-78), in which this Court has had occasion to enunciate the rule, over the past seventy years.

As it is phrased in the last of those opinions, "the decisions of the courts of Puerto Rico with respect to the interpretation of the Island's statutes and to matters of local law are to be accorded the greatest weight"; and are not to be overturned in a case where (*People of Puerto Rico* v. *Rubert Hermanos, Inc.*, 315 U. S. 637, 645),

> "We cannot say that an interpretation placed by the Supreme Court of Puerto Rico upon statutes whose meaning is so open to doubt is plainly incorrect. Accordingly, though the interpretation suggested by the Circuit Court of Appeals may be equally plausible, it erred in reversing the judgment of the insular court."

H. As above indicated, the Circuit Court of Appeals, in the present case, has misinterpreted this rule and has so misunderstood it as to consider that this Court has in effect deprived it of the statutory jurisdiction vested in it by the Congress over appeals from the Territorial courts by Section 128-(a)-Fourth of the Judicial Code.

The Circuit Court of Appeals, in its opinion in the present case, definitely determines and expresses its opinion that the insular Supreme Court was wrong in holding that the term of office of the petitioner De Castro, as City Manager of San Juan, was not for life, subject only to removal in case of failure in good conduct, but was only for a four-year term, and saying (R. 91; 136 F. (2d) 419, 425 "[6]"):

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[10] *Sancho Bonet* v. *Yabucoa Sugar Co.*, *supra*, 306 U. S. at p. 510.

"If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of section 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause 'and shall hold office during good conduct' as meaning that 'the tenure of office of the city manager of the capital is that of four years, providing that during the same he observe good behavior'."

But then the Circuit Court goes on to quote from this Court's emphatic enunciation of this rule in the *Sancho Bonet* v. *Texas Company* case (308 U. S., at p. 471, *supra*), and says (R. 91-92; 136 F. (2d), at p. 425 "[7]"):

"We are not prepared to say that the judgment now under review is 'inescapably wrong.' For many years this court has not had much luck in reversing the Supreme Court of Puerto Rico on questions of local law. As we pointed out in *de la Torre* v. *National City Bank*, 110 F. (2d) 976, 983 (1940), 'though Congress has given us appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the value in controversy exceeds $5,000, the exercise of this jurisdiction is so restricted by the canon prescribed by the Supreme Court of the United States that appeals in such cases are likely to be futile and merely to cause needless delay and expense'."

"It may be pointed out that our function in this class of cases, technically, at least, is different from that of the Supreme Court of the United States upon review of decisions of state courts: There, the Supreme Court has no appellate jurisdiction in matters of state law, and hence it accepts as conclusive the decisions of the state tribunals in matters of local law. But Congress has given us, and the Supreme Court of the United States upon *certiorari*, appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the jurisdictional amount is involved. It may well be that as a matter of legislative policy we ought not to have this jurisdiction; the present case is a good example, involving as it does a political matter of strictly local concern in San Juan, Puerto Rico. But as the law now stands litigants bring these cases to us

> as a matter of right, and we have to pass on them. It is a bit humiliating to this court to be obliged to act practically as a rubber stamp, or else to be reversed by the Supreme Court of the United States."

I. *This is a plain misunderstanding of this Court's rule*, as it has been enunciated over all the years, as above indicated.

J. *The Circuit Court of Appeals misunderstands the rule in another respect also. It understands the rule to apply only to the so-called "insular courts"* in Puerto Rico,—particularly to the Supreme Court of Puerto Rico, as the court of last resort of that "insular" system,—*but not to apply to the so-called "federal court"*, "the District Court of the United States for Puerto Rico"; although that so-called "federal court" is likewise simply a Territorial court,—a Congressional court,—equally with the so-called "insular courts". It is recognized and established by Section 41 of the same Organic Act of the Congress for Puerto Rico of March 2, 1917 [39 Stat., c., 951, 965], by the immediately next preceding Section 40 whereof the so-called "insular courts",—including the Supreme Court of Puerto Rico,—are likewise recognized and established.

The so-called "federal court", thus established, is not a true United States Constitutional court, but is only a Congressional court (*Romeu* v, *Todd*, 206 U. S. 358, 368; *Balzac v. People of Puerto Rico*, 258 U. S. 298, 312), equally with the so-called "insular courts", and deriving its authority from the same sources, *viz.*, from the authority of the Act of the Congress, under the grant of plenary power to the Congress by Article IV, Section 3, Clause 2 of the Constitution,

> "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States",

under which the entire Puerto Rican judicial system,—so-called "insular" and so-called "federal" courts alike,—and

indeed the entire insular Territorial government,—is but an agency of the Congress, deriving all of its powers and authority of every kind solely from the Congressional Act, under that Constitutional power (*Romeu* v. *Todd, supra*; *United States* v. *Heinszen & Co.*, 206 U. S. 370, 386, *et seq.*; *Rafferty* v. *Smith Bell & Co.*, 257 U. S. 226, 232; *Inter-Island Navigation Co.* v. *Hawaii*, 305 U. S. 306, 314); *Porto Rico Brokerage Co.* v. *United States*, 80 F. (2d) 521, 524, *certiorari* denied, May 18, 1936, 298 U. S. 671.

The Circuit Court of Appeals says (R. 92; 136 F. (2d) at p. 425):

> "Incidentally, we have two lines of appellate jurisdiction from Puerto Rico, one from the United States District Court for Puerto Rico, and the other from the Supreme Court of Puerto Rico. 28 U. S. C. See. 225. Appeals from the District Court may involve questions of local Puerto Rican law";

and then the Court proceeds, *mistakenly*, to say (*ib.*, R. 92, *immediately following the preceding quotation*):

> "so far as we know, the 'inescapably wrong' rule has never been applied in such cases."

K. The Court is mistaken in that belief.

One of the most frequently cited cases, illustrative of the rule in question, came, in fact, from that very same federal District Court of Puerto Rico, *viz.*, the case of *Nadal* v. *May*, 233 U. S. 447, in which Mr. Justice Holmes (at p. 454) invited attention to this rule of:

> "the general unwillingness of this Court to overrule the local tribunals upon matters of purely local concern" (*Confer*, Appendix F, *infra*, p. 72).

There is no logical reason for any distinction in the application of the rule, as between the two classes of Territorial Congressional courts in Puerto Rico; and no such distinction has been made by this Court.

L. It follows that the Circuit Court of Appeals, plainly considering, as it did, that the insular Supreme Court was wrong in its decision in this case on the merits, should have so decided; and that the Circuit Court of Appeals was itself in error in thus abdicating its judicial functions because of its misunderstanding and misapplication of this Court's enunciations of this rule, and in mistakenly, because of that misunderstanding, failing to reverse the insular Supreme Court's decision, as it plainly should have done.

POINT II A.

With relation to the term or tenure of the office of city manager, Section 21 of Act No. 99 is too clear and free from ambiguity to admit of the recourse had by the Puerto Rican Supreme Court to extrinsic aids for its interpretation as prescribing a four-year term.

The section reads (Appendix A, *infra*, p. 44):

> "Section 21—The City Manager shall be the chief executive of the Capital: he shall be appointed by the Board of Commissioners created by this Act *and shall hold office during good conduct.*" (Italics ours.)

The meaning of a statutory provision is what was intended by the legislature, and the first and best criterion for ascertaining that intent is the language of the enactment. Where the language is clear and free from ambiguity there is no room for labored construction, and the courts simply apply and enforce the Act according to the ordinary sense of its plain terms. These principles are fundamental. *Caminetti* v. *United States*, 242 U. S. 470, 485. An equally well settled corollary is that courts, having no legislative power, cannot rightly read into a statute anything not expressly stated, or reasonably implied by its terms.

> "There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject matter, and the purposes of those framing them, find out their true meaning, and

the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate and recognized rule of construction, while the latter is judicial legislation, forbidden by the constitutional provisions distributing the power of Government among three departments, the legislative, the executive and the judicial." *Chase* v. *Swayne*, 88 Tex. 218, 225, 30 S. W. 1049, 1052.

And this Court has said with relation to acts of Congress:

"The responsibility for the justice or wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make the laws." *United States* v. *First National Bank*, 234 U. S. 245, 260.

However, the fact remains that where a statute is ambiguous, the courts may resort to available and proper extraneous aids for its interpretation, and in the present instance the Puerto Rican Supreme Court adopted that view. The question immediately presented is whether that view is right or clearly and manifestly wrong, and the answer depends on the legislative intent as evidenced primarily by the language of the Act. In other words, is the meaning of the italicized clause in Section 21 as above quoted, "and shall hold office during good conduct", so doubtful as to warrant the courts in looking beyond the text of the section, or perhaps even the Act, for external evidences of the legislative intent concerning the term or tenure of office of the city manager?

Each of the intermediate appellate courts has noted in substance (R. 39, 87), that the phrase "during good conduct", as it appears in the statutory provision under consideration, is taken almost *verbatim*—certainly in precisely equivalent words—from Section 1, Article III, of the Federal Constitution, providing:

"The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior

> courts as the Congress may from time to time ordain, and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office".

That the phrase "during good behavior", as employed in the above quoted section of the Constitution, clearly confers life tenure, subject, of course, to possible resignation or impeachment, has never been questioned.

In his work on the Constitution, Storey devotes many pages to discussion supporting the wisdom of the policy of life tenure for Federal judges, apparently assuming that no question arises as to their possession of such tenure. Storey on the Constitution, Fifth Edition, Volumme 2, sections 1600 to 1627, pages 416 *et seq.*

In a footnote, Storey refers to the judgment of Lord Holt in *Harcourt* v. *Fox*, 1 Showers Reports 426, English Reports (Reprint), Vol. 1, pp. 107, 111 (1693) for a definition of "good behavior". Harcourt held the office of Clerk of the Peace for Middlesex, under an appointment by letters patent from the Earl of Clare, describing the tenure as "for so long a time only as he well demeans himself therein". Lord Holt held in substance that Harcourt could be removed only for "misbehavior", and by implication that this meant misconduct in connection with his official duties.

Speaking for the Court in the early case of *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 308, Mr. Justice Storey, after quoting pertinent parts of section 1, Article III of the Constitution, said:

> "Could Congress create or limit any other tenure of the judicial office? Could they refuse to pay, at stated times, the stipulated salary, or diminish it during the continuance in office? But one answer can be given to these questions: it must be in the negative."

Again this Court held to the same effect in *Ex Parte Hennen*, 38 U. S. (13 Pet.) 225, 258-259 (1839), in an

opinion never challenged as to that particular in this or any other appellate court, and tacitly reaffirmed in *Shurtluff* v. *United States*, 189 U. S. 311, 316. See also *Smith* v. *Bryan*, 110 Va. 199, 203; 40 S. E. 652, 653. In the present case, the soundness of that interpretation was accepted by both the Puerto Rican Supreme Court (R. 39), and the Court of Appeals (R. 87).

A further strong indication that the Puerto Rican Legislature, in its choice of language in said Section 21, did not mean anything more or less than it said, and particularly did not intend that section to be construed as prescribing any term of years corresponding to that of the five commissioners to be elected at the general elections in and following 1936, lies in the fact that the Act prescribed no such four-year term for any majority of the Commissioners to be appointed to serve during the five years and some months prior to the inauguration of those elected in 1936. See pertinent provisions of the Act in Appendix A, *infra*, pp. 43-46. In short, for the period last mentioned, there was no four-year term to which, on the theory of the Puerto Rican Supreme Court, the term of the city manager could have been related as to that of a majority of the members of the appointing authority, and from which that Court reasoned that the Legislature intended to prescribe a corresponding term for the city manager. The Court of Appeals wisely remarked in this connection, "It is difficult for us to see how Section 21 could mean anything different in 1937, and thereafter, from what it meant in 1931, when the new form of government was constituted." Statutes are to be construed according to conditions as they stood at the times of their enactment. *Platt* v. *Union Pacific R. R. Co.*, 99 U. S. 48, 63. The fact seems to be that Mr. Benítez Castaño, the first city manager, petitioner's predecessor in that office, who apparently assumed office September 11, 1931, served therein until his resignation took effect early in 1937, more than five years later (Resolution No. 243 of the Board of Commissioners, Sept. 16, 1936, Appendix B, *infra*, pp. 47-49).

As we find nothing in Section 21 nor elsewhere in Act 99, in conflict with the literal terms of the tenure provision of that section, or which by any reasonable stretch of the imagination can be construed as making or implying any modification or qualification thereof, we must conclude that the provision is entirely clear and free from ambiguity, that it means simply what it says, namely that the city manager "shall hold office during good conduct", that any resort to extrinsic aids for the purpose of giving it a different construction is wholly unwarranted, and that the Puerto Rican Supreme Court was manifestly and inescapably wrong in holding otherwise.

For a more detailed discussion of the various extrinsic aids utilized by the Puerto Rican Supreme Court, see Point II C, *infra*, p. 27.

POINT II B.

Upon its own theory to the effect that resort to extrinsic aids for the interpretation of said Section 21 with relation to the question or term or tenure of office was justified and necessary, including consideration of certain factual aspects not apparent in the record, the Puerto Rican Supreme Court plainly and manifestly erred in undertaking, as the case then stood, to pass upon that question, and in not remanding the case to the trial court where the new issue could have been tried and adjudicated in a forum empowered to receive and consider all competent evidence, not merely the few isolated facts of which judicial notice could be taken.

With relation to this case, the Puerto Rican Supreme Court is an appellate court by statute empowered only to review the judgment of the trial court upon the record on appeal submitted according to law, and expressly forbidden otherwise to undertake the determination of matters of fact.

Section 1 of the Act of the Puerto Rican Legislature, approved March 12, 1903 (Laws of P. R., 1903 p. 59), provides:

> "Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out, alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay."

Chapter II, Title XII, Code of Civil Procedure of Puerto Rico (1933), entitled "Appeals to Supreme Court from District Court", after providing for the initiation, perfection and dismissal of such appeals, prescribes further in Sections 305 and 306 as follows:

> "Section 305—(956 Cal.) Upon an appeal from a judgment, the court may review the decision, and any intermediate order or decision, if excepted to, which involves the merits, or necessarily affects the judgment; except a decision or order from which an appeal might have been taken."

> "Section 306.—(958 Cal.) (As amended by Act of March 8, 1906, page 164.)—When the judgment, order or decree of the court below shall be reversed, the court shall proceed to render such judgment, order or decree as the court below should have rendered, except when it is necessary that some matters of facts be ascertained, or the damage to be assessed or the matter to be decreed is uncertain, in any of which cases the cause shall be remanded for a new trial in the court below."

With rare exceptions, none of which militates against our position on this point, an appellate court is not empow-

ered to entertain and determine questions either of law or fact not brought before it upon the record sent up from the trial court. The principle is well stated in 4 Corpus Juris Secundum, Section 228, as follows:

> "Subject to a few exceptions, the rule is of almost universal application, in many jurisdictions by virtue of express statutory provision, that questions of whatever nature not raised and properly preserved for review in the trial Court, will not be noticed on appeal." *Isenberg* v. *Sherman*, 212 Cal. 454, 299 P. 528; *Smith* v. *Lewis*, 211 Cal. 294, 295 P. 37; *Rafferty* v. *City of Marysville*, 207 Cal. 657, 280 P. 118. "* * * While the reason for the rule is supportable upon a number of considerations, it is usually placed upon the ground that the opposite party should have the proper opportunity to avoid, by amendment or by supplying any defects in his proof, the effect of the objection" *Jones* v. *Seymour*, 95 Ark. 593, 130 S. W. 560.

And the California Court of Appeals under a Code of Civil Procedure from which that of Puerto Rico is taken, has held that in the absence of special statutory authority, an appellate court is limited to a review of such questions as are presented by the record, or by reasonable inference therefrom, as of the time when the appeal is taken. *Laam* v. *McLaren*, 28 Cal. App. 632, 153 P. 985.

It may be argued in this connection that one of the exceptions to the general rule last cited arises where the question is one of public importance (4 Corpus Juris Secundum, Section 242), and that the present case falls within that exception because the question whether the city manager of the Capital of Puerto Rico has a life tenure or only a term of four years is one of manifest general interest and importance to the people of that City, and no doubt to the people of Puerto Rico generally. We freely concede the public importance of the question, but can perceive no reason why that consideration should be regarded as ground for depriving the petitioner of a full constitutional hearing on the issue presented. On the contrary, if the holding of

the Puerto Rican Supreme Court that the statute is ambiguous and needs the light of extrinsic facts for its interpretation is upheld, then it seems obvious that the public interest will benefit rather than lose by a deliberate and thorough judicial examination of the question, with opportunity on both sides to be heard fully as to both the factual and the legal aspects.

We conclude that the Puerto Rican Supreme Court plainly and manifestly erred not only in holding Section 21 to be ambiguous, but then further even under that view in assuming to pass upon the question of tenure as one of mixed law and fact, and in failing to remand the case to the District Court for trial and determination of that issue.

POINT II C.

Even if it should be held that the Puerto Rican Supreme Court did not err manifestly in resorting to extrinsic aids for the interpretation of Section 21, or was not inescapably wrong in so doing, nevertheless that court was plainly, manifestly and inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered (especially the isolated facts judicially noticed), as well as in its ultimate conclusion that said section prescribes a term of four years.

The soundness of the foregoing caption is, we believe, fully borne out by the pertinent comments of the Circuit Court of Appeals, and by other considerations hereinafter set forth. For the convenience of this Court we quote *seriatum* below the parts of the opinion of the Circuit Court of Appeals, dealing with the various external matters considered by the Puerto Rican Supreme Court, followed in each instance by our remarks.

(1) *Shurtleff Case.*

The Circuit Court of Appeals says (R. 87-88):

"(1) Life tenure for public officers is the exception; hence should not be read into the statute by implication

but only if the intention of the legislature to that effect appears to be so evident as to permit of no doubt. This is an accepted canon of construction, for which the court properly cites *Shurtleff* v. *United States,* 189 U. S. 311 (1903). That case involved the tenure of the office of general appraiser of merchandise. It was provided in the act creating the office that the appraisers should be appointed by the President with the advice and consent of the Senate and might be removed from office at any time by the President for inefficiency, neglect of duty or malfeasance in office. Beyond [fol. 92] that the statute was silent as to the tenure of the office. The court held that Congress had not clearly enough indicated an intention to make the tenure one for life subject only to removal for cause; and therefore that the act should be construed as leaving unrestricted the President's implied power of removal without cause. But the significant thing is that the act there involved did not provide that appraisers should hold office 'during good behavior'. The court pointed out (p. 316) that 'The tenure of the judicial officers of the United States is provided for by the Constitution, but with that exception no civil officer has ever held office by a life tenure since the foundation of the government'. How is the life tenure of judicial officers provided for in the Constitution except by the phrase that they shall hold office 'during good behavior'? The rule of interpretation laid down in the *Shurtleff case,* where the act in question did not use the phrase 'during good behavior', should not be used to create an ambiguity in Section 21 of the act now before us, where the legislature describes the tenure simply as 'during good conduct'."

Our Comments. The distinction thus pointed out is conclusive. The *Shurtleff* case obviously affords no authority whatever for holding that Section 21 of Act No. 99 is ambiguous, or for reading into that section an implied intent on the part of the Legislature to prescribe any term of years for the office of city manager.

(2) *So-called anomalies.*

The Circuit Court of Appeals says (R. 88-89):

> "(2) The court points to the 'anomaly' which would result if the city manager were held to have a life tenure, from the fact that the treasurer, the director of public works, etc., might, under Section 26 be appointed 'for a limited term to be fixed by the city manager,' while an employee attached to the office of the city manager, 'for example, the messenger of his office, by the mere fact of being appointed by the city manager would hold his employment for life unless removed for just cause.' Along the same line, the court states that an uncalled for discrimination would be created between the employees appointed by the other officers and the employees appointed by the city manager, 'as the former would hold their employments during the tenure of the appointing officer whlie the term of office of [fol. 93] the employees appointed by the city manager would be for life.' But these 'anomalies,' if such they be, are relevant only if it is assumed that there is doubt or ambiguity as to the meaning of Section 21."

Our Comments. It is true that the sections of Act No. 99 dealing with the appointment and tenures of the various municipal officers and employees other than the city manager are not entirely clear. How those parts of the Act would be construed upon a proper judicial examination is doubtful in many respects. Whether, in event the city manager is held to have a life tenure, the employees appointed by him will likewise hold their places for life, subject to removal only for misconduct, is problematical and speculative. That question is not properly at issue in this case, and has not been given the time or attention by courts or counsel essential to its well considered determination.

However, assuming, without conceding, that the discriminations in terms of office suggested by the Puerto Rican Supreme Court would necessarily result from a decision that the term of office of the city manager is for life,

it does not logically follow that those discriminations were not deliberately intended by the Legislature as part of its obvious original plan to take the office of city manager very largely out of partizan politics, including perhaps the municipal employees appointed by that officer. If such was the legislative purpose we may find close parallels in the civil service laws and regulations of the United States and many of our states and municipalities, providing for some but not all of their officers and employees what amounts to or very closely approximates a life term, subject to removal only on notice and hearing for misconduct.

So, the Circuit Court of Appeals following its reference, in the last sentence of the last foregoing extract of its opinion, to the "anomalies", quite properly inserted the qualifying words, "if such they be". There is, in our opinion, no showing in the opinion of the Puerto Rican Supreme Court or elsewhere in the record, that any anomaly or incongruity results from interpretation of Section 21 according to the ordinary sense of its plain terms.

(3) *Administrative Construction.*

The Circuit Court of Appeals says (R. 89-91):

> "(4) The court refers to the rule that in cases of doubt 'the practical construction given to a statute by public officials and acted upon by the people' will be regarded as decisive. In this connection the court took judicial notice of the facts that at the general elections held in 1936 and 1940 the various political parties had indicated to the electorate in advance their respective choices for city manager, and that when the newly elected commissioners took office the board proceeded to appoint as city manager the candidate of the successful political party. Appellant objects that the court below ought not to have taken judicial notice of these facts; that he had no opportunity to put in evidence other facts or explanations which would rob the judicially noticed facts of their significance, and thereby he was denied due process of law. But it is clear that

an appellate court may take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction. If the court below took judicial notice of some fact that wasn't so, appellant, on appeal to us, by reference to official records or in some other appropriate way, could [fol. 94] bring the true situation to our notice, and we in our turn, taking judicial notice of the relevant facts, could review any error in statutory interpretation committed by the court below as the result of a misapprehension of the facts judicially noticed by it. Appellant, however, has not undertaken to enlighten us on these matters. Indeed, appellant does not deny the fact, as stated by the court below, that appellant himself was the preannounced choice for city manager of the winning party at the general elections of 1936. And there seems to be no doubt of the further fact, stated by the court below, that when the newly elected commissioners came into office on January 4, 1937, they proceeded at once to appoint appellant as city manager."

Our Comments. Referring to the statement of the Circuit Court of Appeals that an appellate court may take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction, this is a correct statement of a general rule, but its application in Puerto Rico is restricted by Section 398 of the Puerto Rican Code of Civil Procedure, 1933 edition, providing:

"Section 398.—(36 L.) (1875 Cal.) (As amended by Act of February 24, 1906, page 82.)—Courts shall take judicial notice of the following facts:

"1. The true significance of all English and Spanish words and phrases, and of all legal expressions.

"2. Whatever is established by law.

"3. Official acts of the legislative, executive, and judicial departments of Porto Rico and of the United States.

"4. The seals of all the courts of Porto Rico, of the States of the Union, and of the United States.

"5. The accession to office and the official signature and seals of office of the principal officers of Government in the legislative, executive, and judicial department of Porto Rico and of the United States.

"6. The existence, title, national flag, and seal of every State or sovereign recognized by the executive power of the United States.

"7. The seals of courts of admiralty and maritime jurisdiction and of notaries public.

"8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

"In all these cases the court may consult and cite the adequate books or documents.

Under which of the eight subdivisions above quoted do we find authority for judicial notice of what the political parties of Puerto Rico did or announced during the general election campaigns of 1936 and 1940, with regard to the office of city manager of San Juan? We find none. Furthermore, unless the matter noticed was actually set forth in the official resolutions or platform of the party, who could speak with authority for the party and how would a court, or any litigant be able to ascertain the facts?

It may be true that the candidates of certain parties, for membership on the Board of Commissioners of San Juan, announced during the campaign that if elected they would vote for appointment of Dr. de Castro as city manager, but this would not definitely bind the parties to which these candidates belonged to an interpretation of Section 21 as automatically creating a vacancy in that office at any particular time. Furthermore, if the court was warranted in taking judicial notice of that fact, then it should also have taken judicial notice of, or given petitioner an opportunity to prove, the equally important fact that Mr. Benitez Castaño, then city manager of San Juan, resigned in September 1936 (Appendix B, *infra* p. 47), during the same campaign, thus assuring a vacancy in the office early in the

following year, and thus obviating any inference such as that drawn by the court.

As to the further suggestion of the Circuit Court of Appeals in this connection, that the petitioner might have protected himself fully against the inferences drawn by the Puerto Rican Supreme Court from the isolated facts judicially noted, by challenging any such fact improperly noticed, and by citing other facts so noticeable, the unsoundness of that view is at once apparent. It would deprive the petitioner of his right to a full hearing. The pertinent facts offsetting those inferences may have been largely such as are not subject to judicial notice under Puerto Rican law. We say "may have been" not for lack of information as to some at least of those facts, but because the record does not disclose them, petitioner having had no opportunity to prove them. The petitioner alleged the existence of proof of such facts in his motion for reconsideration in the Puerto Rican Supreme Court (R. 60).

Much of what is said immediately above applies with equal force to the further fact judicially noticed by the Puerto Rican Supreme Court, that petitioner became a candidate in the general election of 1940 for membership in the Puerto Rican House of Representatives. The inference drawn by the Court from that fact, to the effect that petitioner himself must have realized that his term as city manager would expire in 1941, is a complete *non sequitur*. At that time his status as city manager had been in suspense and involved in litigation for more than a year. As the fact has transpired, he would have been right in estimating that it would continue so for several years longer in spite of anything he could do. It would obviously have been just as reasonable to infer that he intended, if elected to the Legislature, to abandon his claim to the city managership, regardless of his conviction of the justice of that claim. Other possible explanations of that candidacy, entirely consistent with such a conviction, may easily be postulated. For example, he may have supposed that he could

legally serve as a legislator while his status of city manager continued in suspense during the litigation in which it was then, and might continue for years to be, involved.

Nor does the fact that petitioner accepted his appointment and entered upon the duties of the office on January 4, 1937, over two months before the resignation of his predecessor took effect, warrant a conclusion that he must have then placed on Section 21 a construction different from that which he now maintains. The facts necessary to establish or refute such a conclusion are not in the record, because the length of the term of office was not in dispute in the trial court. Perhaps the petitioner was not at that time fully informed of the details of the resignation of his predecessor, and may have assumed that it had already taken effect. Or, not being a lawyer himself, he may up to that time have given no consideration to the question whether a legal vacancy existed. It will be noted, however, that within a few days after his assumption of the duties of the office, he applied on January 9, 1937, to the Attorney General of Puerto Rico, for an "opinion with respect to the term of the officers and employees of the Capital which were appointed on September 11, 1931". (Appendix D, *infra*, p. 52).

The Puerto Rican Supreme Court also took judicial notice of the fact that Mr. Fernando Geizel, who had been appointed to succeed petitioner upon the latter's removal in 1939, was the "candidate" of certain political parties for the same office in the general election of 1940, that those parties won that election, and that Mr. Geizel was appointed (R. 44). However, petitioner alleged in his "Opposition" to the Board's motion for stay of execution, filed in the Puerto Rican Supreme Court November 4, 1941, that Mr. Geizel merely continued in office as city manager, without reappointment, until his resignation long after January, 1941. In any event, the so-called "candidacy" of Mr. Geizel in 1940 does not support the inference drawn by the Court, any more than does that of Dr. de Castro in 1936, for it

must by that time have been generally known throughout the City that the whole matter was involved in litigation. All that the 1940 candidates for the Board of Commissioners could have meant by announcing Mr. Geizel as their choice for city manager was that they would vote to retain him in that office during their term as long as the courts would permit.

Likewise, with relation to Mr. Benitez Castaño, petitioner's predecessor in the office in question, it was alleged by petitioner in the "Opposition" last above mentioned, that said predecessor remained in office over five years without reappointment (R. 19). If petitioner had been permitted to prove this it would have still further tended to refute the contention of the Board that there was an established administrative construction of the statute to mean a four-year term.

The fact is, as so forth in the foregoing statement of the case (p. 4), the Board itself argued in the earlier stages of this litigation that the term of office of the city manager was for life, and never advanced its present contention to the contrary until it did so, apparently as an afterthought, by its motion for stay of execution filed in the Insular Supreme Court on October 27, 1931, nearly ten months after the expiration of the theoretical four-year term to which they now claim the petitioner was limited.

That the Legislature of Puerto Rico itself not only did not construe Act No. 99 as providing a four-year term for the city manager, but actually declined to insert such a provision in the law, is indicated by the fact that, as originally introduced, Section 21 of Senate Bill No. 1, Regular Session of 1931 of that body, subsequently enacted with amendments as Act No. 99, actually provided expressly for such a term, and was amended before enactment by striking out that provision and substituting the present text (Appendix E, *infra*, pp. 61-62). That the Legislature, as late as 1936 and 1937, was still of the same mind, is shown by the facts that bills were introduced in each of its regular sessions of those years, to provide expressly for elec-

tion of the city manager of San Juan at the quadrennial general elections, and that each of those bills failed of enactment (R. 34-36).

And the Attorney General of Puerto Rico, highest administrative law officer of the Insular Government, in two opinions rendered respectively December 8, 1936, to the Board, and January 30, 1937, to the petitioner, held the term of the city manager to be for life, subject to possible removal for misconduct. See Appendix C, *infra* p. 50 and Appendix D, *infra*, p. 52.

It follows, we believe that administrative interpretation of the law in question, as well as every other available extrinsic indication, was in fact directly contrary to the present contention of the Board and the findings of the Puerto Rican Supreme Court.

POINT II D.

The judgment of January 14, 1942, although phrased as a stay of execution, amounts in substance and practical effect to an amendment of the prior judgment in a vital judicial particular, thus exceeding the jurisdiction of the court.

This "stay of execution" is not the temporary or conditional one to which the great mass of judicial precedent on the general subject of stays of execution relates. According to its literal terms this stay is a permanent and unconditional one. The motion upon which it was based prayed that the court:

> "Issue an order in these proceedings, staying the execution of the judgment rendered in the case at bar on June 28, 1940, insofar as said judgment orders the reinstatement of petitioner Carlos M. DeCastro in the office of City Manager of the Capital, as the tenure of said office, for which petitioner was elected in the year 1936,[11] expired in January, 1941" (R. 18).

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[11] The phrase "elected in the year 1936" is, of course, erroneous as the fact in this particular is that the petitioner was not elected or even appointed in 1936, but was appointed by the Board on January 4, 1937 (F. R. 1, 30).

The judgment reads:

> **"For the reasons set forth in the foregoing opinion, the motion filed by the Board of Commissioners of San Juan on October 27, 1941, is granted and in consequence thereof the execution of the judgment of this Court of June 28, 1940, is stayed insofar as it decrees the reinstatement of petitioner Carlos M. de Castro in the office of City Manager of the Capital because the term for which he was appointed expired in February,[12] 1941" (R. 46).**

So, the very reason for which the so-called stay was prayed and granted, and the absence of any prescribed period or other condition of any kind in the order, show conclusively that it was definitely intended to be, as it is in form and substance, a wholly unconditional stay forever of the execution of the reinstatement part of the prior judgment thus amounting to all intents and purposes as a vacation of the indicated part of the prior judgment.

Furthermore, it is manifest that the court, in dealing with the motion for stay, regarded it as involving an entirely new question of mixed law and fact, namely the question of the term of the office of city manager, which, in event of determination thereof in favor of the theory of the Board, would call for some kind of reformation or modification of that part of the original judgment providing unqualifiedly for reinstatement. Apparently counsel for the Board, originally, and the court, in formulating its judgment, were apprehensive, and we believe rightly so, that a straight-out judgment amending the original judgment by inserting therein a condition that the reinstatement part thereof should not be effective after January (February?), 1941, would exceed the powers of the court

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[12] Note the discrepancy of one month between the theory of the Board and that of the Court as to the date of expiration of the alleged four-year term of office, a discrepancy not satisfactorily reconciled anywhere in the record, illustrating the difficulty of applying the four-year theory.

In any event they hit upon and adopted the expedient of stay of execution, perhaps hoping thus to bring the action taken within the special authorization of control of process, as well as the amendment provision, of subdivision 8, Section 7, Code of Civil Procedure of Puerto Rico, 1933 Edition, which reads:

"Section 7. (128 Cal.) Every Court has power:

* * * * * * * * * *

8. To amend and control its process and orders so as to make them conformable to law and justice.

Corresponding provision, in exactly the same words, appears in Section 128, Code of Civil Procedure of California, Deering.

Following the reference to the Code provision last above quoted as constituting authority for granting the stay of execution, the Puerto Rican Supreme Court opinion proceeds (R. 39): "See by analogy *McAuliffe* v. *Couglan*, 105 Cal. 268; *Rowe* v. *Blake*, 112 Cal. 637, 643." Upon a careful examination of those cases we fail to discern the slightest bearing that either could have upon the case at bar.

Neither in Puerto Rico nor in California has the statutory regulation last above quoted ever before been recognized as affording any authority for amendment of a final judgment entered in a prior term in any judicial particular, or by adding entirely new matter thereto adversely affecting either party. Nor has it in either jurisdiction ever been held to sanction a permanent stay of execution, amounting in effect to a modification of a judgment entered in a prior term.

On the contrary, the judicial precedents of both Puerto Rico and California are uniformly to the effect that the amendatory authority extended by the quoted procedural statute allows, after final entry of judgment, only the correction of clerical errors or misprisions, and does not permit the insertion of new judicial provisions.

It was so held by the Puerto Rican Supreme Court in the relatively early case of *Marvin & Jones Inc.* v. *Torres,* 19 P. R. R. 46 (1913), the authority of which remains unchallenged to this day.

And the California appellate courts have followed the same rule in many cases, of which we cite the following:

(1) Where it was sought to amend a mortgage foreclosure decree two months after its entry, by inserting a new item in the description of property to be sold thereunder. *First National Bank* v. *Dusy,* 110 Cal. 69, 74, 42 P. 476, 478.

(2) With relation to a belated attempt to insert provision for alimony and attorneys' fees in a previously entered divorce decree, *O'Brien* v. *O'Brien,* 124 Cal. 422, 428, 57 P. 225, 227.

(3) Where the trial court, some months after entering judgment of dismissal of an action for specific performance, attempted to insert therein, by *nunc pro tunc* order, a judgment for costs. *In re Potters Estate,* 141 Cal. 424, 75 P. 850, citing *inter alia* Freeman on Judgments, secs. 61, 68, and *Leonis* v. *Leffingwell,* 126 Cal. 372, 58 P. 940.

(4) Where a writ of mandamus had to be issued to compel a trial court to settle a bill of exceptions for review of the legality of a substantial amendment to a judgment entered five months before. *Calkins* v. *Monroe,* 17 Cal. App. 324, 119 P. 680.

(5) In granting a writ of prohibition to a trial court to prevent hearing and determination of motion to modify or revoke an injunction previously granted after notice and hearing. *United Railroad Company* v. *Superior Court,* 170 Cal. 755, 151 P. 129.

(6) Where a writ of prohibition was granted to prevent enforcement by the trial court of a judgment (in a partnership dissolution suit) which had been amended two months after its entry by *nunc pro tunc* order so as to eliminate a

provision in the original judgment for appointment of a receiver. *Schroeder* v. *Superior Court*, 73 Cal. App. 687, 239 P. 65.

(7) In an action in ejectment, where the trial court, after entry of final judgment, attempted to amend the same in certain judicial particulars. *Stanton* v. *Superior Court*, 202 Cal. 478, 261 P. 1001, citing *Dolan* v. *Superior Court*, 47 Cal. App. 235, 240, 190 P. 469.

In California, after entry of final judgment, the power to amend is gone, except as this may be authorized by the Code provision for correction of clerical errors or misprisions, and those for conforming the conclusions and judgment to the findings of fact. Any further order or judgment is a nullity, because the court is without jurisdiction. *Bank of Orland* v. *Dodson*, 127 Cal. 208, 59 P. 584; *White* v. *White*, 130 Cal. 597, 62 P. 1062; *Consolidated Construction Co.* v. *Pacific Electric Railway*, 184 Cal. 244, 193 P. 238; *Gillespie* v. *Andrews*, 78 Cal. App. 599, 248 P. 715.

For the reasons above indicated, we conclude that the Puerto Rican Supreme Court was clearly and manifestly in error in citing subdivision 8 of section 7 of the Puerto Rican Code of Civil Procedure as authority for its action in granting a permanent stay of the execution of the reinstatement part of its original judgment (R. 39), amounting to a substantial amendment of that judgment; and that the Court of Appeals likewise erred in that part of its opinion holding on the same ground in substance that if the Court below was correct in its conclusion that the petitioner's term of office had expired, that Court had jurisdiction to stay the execution of its judgment insofar as it decreed reinstatement (R. 81).

There being no other statutory authority for such action it is necessary to conclude also that the decision was patently erroneous and inescapably wrong. The Puerto Rican Supreme Court should have treated the question of term of office as a pure question of law answerable in favor of

the petitioner on the face of the record (see Point IIA, *supra*, pp. 20-24). Even if that Court had been right in regarding section 21 of Act No. 99 as ambiguous with relation to the term of office, and as thus warranting resort to extrinsic aids for its interpretation, the case should have been remanded to the District Court for determination of that partially factual question (See Point IIB, *supra*, pp. 24-27).

CONCLUSION.

The opinion and judgment of the Supreme Court of Puerto Rico, staying the execution of its prior judgment directing reinstatement of the petitioner as city manager, are plainly, manifestly and patently erroneous, and the United States Circuit Court of Appeals likewise erred in affirming that judgment.

The judgment of the United States Court of Appeals should be reversed with a direction to remand the case to the Insular Supreme Court with instructions to quash the stay of execution.

Respectfully submitted,

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APPENDICES.

A.—Extracts of Puerto Rican Act No. 99, approved May 15, 1931, and copy of section 50 thereof as amended by Act No. 10 of March 24, 1937 (pp. 43-46).

B.—Resolution No. 243 of the Board of Commissioners of San Juan, dated September 16, 1936, accepting resignation of Mr. Jesus Benítez Castaño (pp. 47-49).

C.—Opinion of Attorney General of Puerto Rico, dated December 8, 1936 (pp. 50-51).

D.—Opinion of Attorney General of Puerto Rico, dated January 30, 1937 (pp. 52-60).

E.—Certificate of the Secretary of the Puerto Rican Senate as to legislative history of section 21 of Act No. 99 (pp. 61-62).

F.—Memorandum of decisions of this Court enunciating the rule of deference to judgments of Territorial Courts in matters of local law (pp. 63-78).

APPENDIX A.

EXTRACTS OF ACT NO. 99 OF THE PUERTO RICAN LEGISLATURE,

Approved May 15, 1931

(Laws of Puerto Rico, 1931, pp. 626-656)

AN ACT
TO ESTABLISH A SPECIAL GOVERNMENT FOR THE CAPITAL OF PORTO RICO, AND FOR OTHER PURPOSES.

Be it enacted by the Legislature of Porto Rico:

Section 1.—The Municipality of San Juan, Porto Rico, as constituted by legislation in force, is hereby abolished. In its place is created a body politic and juridic of local government, with the same territorial limits that the Municipality of San Juan now has.

Section 2.—The word "Capital" as used in this Act shall refer to the body politic and juridic created in accordance with the preceding section.

* * * * * * * * * * *

Section 9.—The legislative powers conferred by this Act on the Capital shall be exercised by a governmental body which shall be officially known as "Board of Commissioners of San Juan." This Board of Commissioners shall be composed of five members, who shall be appointed by the Governor of Porto Rico, with the advice and consent of the Insular Senate, for the following terms:

One Commissioner for a term of one year;
One Commissioner for a term of two years;
One Commissioner for a term of three years;
One Commissioner for a term of four years;
One Commissioner for a term of five years.

None of the first five commissioners appointed in accordance with this Act shall assume his office until his appointment has been confirmed by the Insular Senate.

Section 10.—There are also hereby created the offices of City Manager, Treasurer, Director of Public Works, Director of Health and Charities, School Director, Auditor and Secretary of the Capital.

* * * * * * * * * * *

Section 18.—Subject to other provisions of this Act, the Board of Commissioners shall have, among its other legislative and administrative powers, the following special powers:

(1) To approve the annual budget of receipts and expenditures;

(2) To sell, exchange, encumber, or lease real and personal property belonging to the Capital; *Provided*, That ordinances selling, exchanging, encumbering, or renting waterworks, electric plants, or any other establishment or plant for the exploitation of a public service for the Capital, shall be ratified and approved by the Legislature;

(3) To authorize loans, subject to the approval of the Executive Council of Porto Rico;

(4) To levy reasonable taxes and excises within the jurisdictional limits of the Capital; *Provided*, That for the purpose of applying the industrial and commercial license tax act approved by the Legislature of Porto Rico on March 28, 1914, the Board of Commissioners is hereby authorized to include, by means of an ordinance or resolution, any industrial or commercial establishment or agency not enumerated in said act;

(5) To create such positions as may be strictly necessary for the government of the Capital, and to provide the corresponding salaries in the budget; *Provided*, That the Board of Commissioners may not create any department or office in addition to those herein prescribed; *Provided, further*, that no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties of such employee, and stating the need of the position for the public service;

(6) To create any independent board or commission to administer the waterworks or any other public service of the capital.

* * * * * * * * * *

Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct.

Section 22.—The City Manager may be removed by the Board of Commissioners, for just cause, upon hearing and an opportunity to defend himself either in person or

through attorneys. The following shall be causes for the removal of the City Manager: Any act of his constituting a felony; any act of his constituting a misdemeanor and implying moral turpitude; or carelessness, inexcusable negligence in the performance of his duties, or immoral or incorrect conduct in the exercise thereof.

Section 23.—Whenever the Board of Commissioners files charges against the City Manager, the latter may be suspended and the payment of his salary stopped.

* * * * * * * * * * *

Section 25.—When the office of City Manager is vacant, it shall be incumbent upon the Board of Commissioners to designate the person who shall fill said vacancy; *Provided*, That until the said vacancy is filled, the said office shall be discharged by a member of the Administrative Board, in accordance with the preceding section.

Section 26.—The City Manager shall appoint the following officers:

(1) Treasurer of the Capital;
(2) Director of Public Works;
(3) Director of Health and Charities;
(4) School Directors;
(5) Secretary of the Capital.

Section 27.—The Treasurer, the Director of Public Works, the Director of Health and Charities, the School Director, and the Secretary of the Capital may be removed by the City Manager, for just cause, upon hearing and an opportunity to defend themselves either in person or through attorneys. The following shall be causes for the removal of said officers: Any act of theirs constituting a felony; any act of theirs constituting a misdemeanor and implying moral turpitude; carelessness, or inexcusable ignorance in the performance of their duties, or immoral or incorrect conduct in the exercise thereof.

* * * * * * * * * * *

Section 36.—The Auditor of the Capital shall be appointed by the Board of Commissioners. This official may be removed by the Board of Commissioners for just cause, after a hearing and an opportunity to defend himself either personally or by attorneys. Causes for removal of this official shall be any act performed by him which constitutes a felony; any act performed by him which constitutes a

misdemeanor and implies moral turpitude; carelessness or inexcusable negligence, or immoral and incorrect conduct, in the discharge of his office.

* * * * * * * * * *

Section 39.—All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. Said employees shall be appointed for the term for which each officer is appointed. The employees of the Capital may be removed for just cause by the officer appointing them, after a hearing and an opportunity to defend themselves. Any employee may be suspended from office and salary upon the preferment of charges against him by the corresponding official.

* * * * * * * * * *

Section 50.—The Board of Commissioners created by this Act shall be elected by popular vote at the general elections to be held in 1936, and every four years thereafter. The Commissioners appointed by the Governor of Porto Rico in accordance with section 9 of this Act shall hold office until the first Monday in January of 1937.

* * * * * * * * * *

Section 50. (as amended by Act No. 10, March 24, 1937, Laws of P. R., 1937, p. 131). The Board of Commissioners created by this Act shall be composed of nine members. Five of these nine members shall be elected by the popular vote of the qualified voters of both precincts of San Juan at the general elections to be held in 1940 and each succeeding four years. The other four members shall be appointed by the Governor of Puerto Rico with the advice and consent of the Insular Senate. The nine members of the Board of Commissioners shall take office on the second Monday in February following each general election; *Provided*, That the five members of the Board of Commissioners elected at the general election of 1936 shall continue in office until the end of the terms for which they were elected, and said Board of Commissioners shall be increased in the manner indicated as soon as this Act takes effect. * * *

APPENDIX B.

RESOLUTION NO. 243, BOARD OF COMMISSIONERS OF SAN JUAN, SEPTEMBER 16, 1936.

Granting A Leave of Absence to the City Manager Honorable Jesus Benitez Castaño, Accepting the Resignation of His Office; and for other Purposes.

Whereas, the Honorable Jesus Benitez Castaño, City Manager of San Juan, has addressed a letter to this Board of Commissioners dated September 11, 1936, which reads as follows:

> I have the honor of addressing you to inform that I have sent a letter to the Treasurer of the Capital, Mr. Bolivar Pagán requesting him, in accordance with the law which governs us, that he assume the duties of Manager of the Capital beginning tomorrow, and making known to him my decision of requesting from you a leave of absence, at the termination of which you can consider my resignation as City Manager tendered, notwithstanding that I will continue the work of terminating the report of the activities of this government for the year 1935-36, in which I will make a brief review of the work of this administration from September 11, 1931 to date.
>
> I therefore request of you to grant me a leave of absence of 150 working days, with pay, commencing tomorrow, at the end of which term my resignation as City Manager, which I now tender irrevocably, shall take effect.
>
> It seems unnecessary to state to you that if during the term of my leave my appearance is necessary for any matter of the government I will promptly come before you and render any service that may be needed to the Government of the Capital.
>
> Yours truly,
>
> (Sgd.) JESUS BENITEZ CASTAÑO,
> *City Manager of the Capital.*

Whereas, on the same date, September 11, 1936, the City Manager of the Capital, Honorable Jesus Benitez Castaño, sent to this Board of Commissioners the following letter:

> As an addition to my previous letter of this date I wish to state that the principal reason that prompted me to request of Mr. Bolivar Pagán, Treasurer of the Capital that he take charge provisionally of the duties and obligations of my office as City Manager of the Capital, and request of you a leave of absence, is, that my physician, Dr. Ramon M. Suarez has recommended a prolonged rest without prejudice of my dedicating a few moments daily to the termination of the annual report corresponding to the year 1935-36 which, as I informed Mr. Pagán and you has great importance for me.
>
> Nevertheless, as upon accepting the office of City Manager, I did so completely determined to fulfill this office until the Tuesday following the first Monday of 1937, (in this case 4th of January 1937), above all other consideration, including my health, I am ready at any time to assume the duties of my office, if in my judgment before the concession of the leave requested this should be necessary, or in the event that you should deem it necessary to the interest of this administration after granting the same.
>
> Hoping that you can act as soon as possible on my request for the leave requested in the aforementioned letter of the 11th, I am,
>
> Yours truly,
>
> (Sgd.) JESUS BENITEZ CASTAÑO,
> *City Manager of the Capital.*

Therefore, Be It Resolved by the Board of Commissioners of San Juan:

Section 1.—To grant, as it is hereby granted, to Mr. Jesus Benitez Castaño, the leave of absence requested by him as City Manager, effective from the 12th of September 1936 at the first hour, which will be extended for one hundred and fifty (150) working days, with pay.

Section 2.—To accept, as it is hereby accepted, the resignation presented by Mr. Jesus Benitez Castaño of his office of City Manager of San Juan, effective immediately upon termination of the leave referred to in the previous section.

Section 3.—This Board of Commissioners makes complete acknowledgment of the competent and effective work done by Mr. Jesus Benitez Castaño as Chief Executive of this Administration and wishes at the same time to give a vote of thanks to Mr. Benitez Castaño for the services rendered by him to this Government of the Capital in an honest, conscientious and constructive manner.

Section 4.—In conformity with the provisions of the law that govern this Government of the Capital, by these presents, the Honorable Bolivar Pagán is designated to fulfill the functions of City Manager of San Juan.

Section 5.—This resolution, being of an urgent nature, will take effect immediately after approval.

I, LINO PADRON RIVERA, Secretary of the Capital,

Do Hereby Certify:—That the preceding is a true and correct copy of the original text of the ordinance approved by the Board of Commissioners of San Juan in the extraordinary session held on September 16, 1936, with the affirmative votes of Manuel San Juan, Angel M. Pesquera, Jaime Sifre Jr., Eudardo R. Gonzáles, and the President Mr. Rafael Landrón y Landrón, as appears from the records in my custody.

As the request of attorney Gabriel de la Haba, I sign these presents and affix thereto the Seal of the Capital, at San Juan, Puerto Rico, this 3rd day of August 1943.

(Sgd.) L. PADRÓN RIVERA,
LINO PADRON RIVERA,
Secretary of the Capital.

(Seal of the Capital.)

APPENDIX C.

OPINION OF THE ATTORNEY GENERAL OF PUERTO RICO, DECEMBER 8, 1936.

December 8, 1936.

Mr. Rafael Landrón Landrón, President, Board of Commissioners, Government of the Capital, San Juan, Puerto Rico.

Sir:

I acknowledged receipt of your letter of December 2, of this year, in which you request my opinion as to whether the Board of Commissioners of the Capital, elected in the past elections held in this Island can, by virtue of the provisions of article 50 of the law creating the Government of the Capital, appoint a new city manager to take office as soon as appointed, if the person were other than the one now holding office.

You state that the City Manager of the Capital, Mr. Jesús Benitez Castaño, is now enjoying, as appears from Resolution No. 243 approved by the Board of Commissioners of San Juan, which you enclose, a vacation with pay of 150 working days, and by said resolution the resignation of said official is accepted to take effect upon termination of the leave, and that at present Mr. Bolivar Pagán is acting as Manager of the Capital.

I am sorry to inform you with respect to the above inquiry, that this office cannot render the opinion requested by you because of the fact that the members elected to the Board of Commissioners will not be able to take possessions of their offices as such until the first Monday in January, 1937, and it is to this new Board that would correspond the formulation of your consultation, in the event that it might deem the same convenient: therefore considering the inquiry made by you of a hypothetical nature for the reasons stated.

Regarding the subject of inquiry you ask in addition if the Board of Commissioners could appoint a new Manager to take office prior to the expiration of the leave granted to Mr. Benitez Castaño.

I ignore whether in mentioning the Board of Commissioners you refer to the present Board or to that elected in the past elections. If you refer to the latter your inquiry would be hypothetical as above expressed; if on the contrary you refer to the present Board of Commissioners then I must answer your consultation in the negative, inasmuch as in accordance with Article 24 of the Law of the Capital, in the event of a leave by the City Manager of the Capital, he is replaced provisionally by one of the officers in their order of priority as they appear enumerated in Article 26 of the same law, and as a result of this, having granted a leave to the City Manager Mr. Jesús Benitez Castaño and this official being in the enjoyment of the same, the Treasurer of the Capital Mr. Bolivar Pagán is acting as temporary manager and until such time as the office becomes vacant the Board has no authority to appoint a new City Manager before the expiration of the leave granted to Mr. Benitez Castaño. See Section 25 of the law cited.

Yours truly,

B. FERNÁNDEZ GARCÍA,
Attorney General.

EA/RCA/ach/eo.

Rafael Cabello, File Clerk of the Department of Justice of Puerto Rico, do hereby certify:—

That the foregoing is an exact and true copy of the opinion rendered by the Attorney General of Puerto Rico to Mr. Rafael Landrón y Landrón, President of the Board of Commissioners of the Government of the Capital, as of December 8, 1936 which is on record in the files of this Department under my custody; and at the request of attorney Gabriel de la Haba I issue this copy which I sign and affix thereto the seal of the Department, on this 13th of November 1942, cancelling thereon internal revenue stamps amounting to one dollar twenty five cents ($1.25).

(Signed) RAFAEL CABELLO,
File Clerk Department of Justice.

Internal Revenue Stamps cancelled in the amount of $1.25.

(SEAL.)

APPENDIX D.

OPINION OF THE ATTORNEY GENERAL OF PUERTO RICO

Copy. January 30th 1937

Dr. Carlos M. de Castro City Manager of the Capital San Juan, P. R.

SIR:

I am pleased to acknowledge receipt of your communication of the 9th instant requesting my opinion with respect to (1) the term of the officers and employees of the Capital which were appointed on September 11th 1931; and (2) if the new administration is or is not a continuation of the former.

From your letter it appears that the commissioners elected on the 3rd of November 1936 took possession of their offices on January 4th of the present year.

Your consultation involves the interpretation of various sections of the law establishing a special government for the Capital of Puerto Rico (Law No. 99 of the 15th of May 1931, subsequently amended, to wit;

* * * * * * * * * *

(The opinion here quotes sections 9, 10, 18, 21, 25, 26, 27, 36 and 50 of the act cited. See Appendix A, *supra*, pp. 43-46).

* * * * * * * * * *

In accordance with the transcribed provisions, and speaking in general terms, the Government of the Capital is composed of a Board of Commissioners, which is the legislative organ, of various administrative officers who constitute the executive and administrative branch, and of those employees that may be necessary for the functioning of said government.

The Board of Commissioners is elected by popular vote every four years, except the commissioners who formed the first board, who were appointed by the Governor of Puerto Rico, with the advice and consent of the Senate and for a term which expired the first Monday of January 1937,

having taken possession on this date those commissioners elected in the elections held on the 3rd November 1936.

The appointment of the City Manager is incumbent upon the Board of Commissioners whenever said office becomes vacant, as well as the auditor of the Capital, and also the creation of such positions as may be strictly necessary, and the incorporation in the budget of the corresponding salaries. The Administrator of the Capital in turn is authorized to appoint the administrative officers, with the exception of the auditor, and to these officers correspond the appointment of the employees pertaining to their departments whose positions may have been created previously by ordinance or resolution of the Board of Commissioners.

With the exception of the term of four years which is established as the term of duration of the office of Commissioner, the law does not establish the term of duration with respect to other officers and employees of the Government of the Capital. With regard to the City Manager it is provided in Article 21 *supra* that he will fulfill his office during good behaviour, and with respect to the other administrative officers nothing is provided in the law, although in article 39 it is provided that the employees appointed by the Administratve officers will discharge their duties for the same term of appointment of each of such officers.

It is the general doctrine that discharge of the duties of an office or public employment is for a definite term, or while the officer and employee observe good conduct (during good behaviour), or at the will or discretion (at pleasure) of the nominating authority, unless its power to separate or discharge is limited by the law.

> "Officers and persons in public position hold, first, for a definite term; second, during good behaviour; or, third, at the will or discretion of some officer or department * * * A definite term is where the law so prescribes, which may be by statute, or the organic law of the state. 2 McQuillin Municipal Corporations, 2d Ed., p. 163."

"All offices, the tenure of which is not fixed by the Constitution or limited by law, must be held either during good behavior, or (which is the same thing in contemplation of law), during the life of the incumbent." In the matter of *Duncan N. Hennen*, 38 U. S. 202-227."

"A provision in the charter that the appointees of a certain department shall hold office during good behavior was construed to mean that such appointees shall hold office during good behavior not to exceed the limit fixed by the Constitution." *Stuart* v. *Ellsworth*, 75 Atl. 59; McQuillin Municipal Corporations, second edition, p. 170, sec. 508 (488).

"Ordinarily in the absence of any constitutional restriction there is no inherent objection under the American form of government to the creation of public offices with the tenure of good behavior." 22 Ruling Case Law, p. 551.

"If no definite term exists and the law does not otherwise provide, the tenure is at the will of the authority which confers the office, and unless restrained by law, the power which appoints may remove." 2 McQuillin Municipal Corporations, 2nd. Ed., p. 171.

"If no definite term is prescribed, and in the absence of legal restrictions, including civil service regulations, the incumbent holds subject to discharge at any time." 2 McQuillin Municipal Corporations, 2d. Ed., p. 172.

"When the term of tenure of a public officer is not fixed by law, the general rule is that the power of removal is incident to the power to appoint. The tenure not having been declared by law, the office is held during the pleasure of the authority making the appointment. Hence in the absence of all constitutional or statutory provision as to the removal of public officers the power of removal is considered as incident to the power of appointment." 22 R. C. L. p. 562.

"The power of appointment generally carries with it, as an incident, the power to remove; but the power of removal may be impliedly or expressly restricted by constitutional provisions or statute, and the general rule does not apply when a definite term is attached to an office by law, or where it is provided that the officer shall hold during good behavior." 46 C. J. 985.

"Where the constitution provides that appointive officers may be removed at the pleasure of the power

by which they shall have been appointed, they are removable at the pleasure of the appointing power, notwithstanding the legislature has fixed a definite term of service * * *." 46 C. J. 985.

"Where the power of removal is limited to specific causes, the removing authority may not remove for any cause not so specified. It is sometimes provided by the constitution or statute that removal shall be had for 'cause' or 'only for cause', and it is generally held that, in the absence of provisions to the contrary, officers appointed for a definite term, or to hold during good behavior, are removable only for 'cause', even though it is not so provided by statute. However, unless restricted by positive provisions of the law, the power of appointment generally carries with it, as an incedent, the power to remove, at the pleasure of the appointing power, officers not holding under a term fixed by law * * *." 46 C. J. 985-986.

The law which we are now interpreting does not contain any provision authorizing the discharge of officers at the will of the nominating authority. On the contrary it limits its faculties of separating a public officer or employee from his office or employment, establishing on the contrary that the discharge must be for just cause, hearing, and opportunity for defense, personally or through an attorney at law. The City Manager may be discharged by the Board of Commissioners for the following reasons:

For any act committed by him which constitutes a grave offense (felony); any act committed by him that constitutes a minor offense (misdemeanor) and implies moral turpitude, abandonment, inexcusable negligence in the discharge of his duties or immoral or incorrect conduct in the discharge thereof. The auditor of the Capital, like the City Manager, may be discharged by the Board of Commissioners for the same causes as the other administrative officers. Employees may be discharged by the appointing officer, for just cause, hearing, and opportunity of defense.

It results from what has been heretofore stated that the Commissioners discharge the duties of their office for

a definite term of four years and that the city manager discharges his duties during good behavior, that is to say, with the character of a life tenure. It also appears that the power of discharge is limited and regulated by law and that, therefore, no other public officer or employee of the Capital discharges the duties of his office at the will of the person appointing him.

With these circumstances in view, do the appointments of the officers and employees made on September 11th 1931 upon the inauguration of the new system of government for the Capital of Puerto Rico participate of the nature of a life tenure? We are inclined to decide that it was the intention of the legislator to give such a character to said offices and position, more so, when the law does not fix a definite term of duration and limits the discharge to certain causes and to certain procedure.

Apart from these another reason exists which sustains our conclusion, and this is, that the administrative officers of the capital are not agents of the City Manager or of the Board but of the political and juridic corporation known ts the Capital of Puerto Rico.

> "Though a public employment be without term and at will it does not necessarily follow that it is conterminous with the expiration of the term of office of the appointment power. To do so the employment must create the relation of principal and agent between the appointing power and the appointee. This situation is best illustrated in the case of deputies to executive officers where the courts have held that a deputy is a mere adjunct of the appointing power and hence his employment or term of office ceases with the expiration of the term of office of the appointing power. A deputy is defined as one 'who by appointment exercises an office in another's right, having no interest therein but doing all things in his principal's name and for whose misconduct the principal is answerable.' 9 A. & E. Ency. L. 369. 'A Deputy * * * is in law deemed an agent.' Story on Agency, Sec. 149, note, cited in *Haring* v. *Lee*, 22 W. Va. 661, 667. Hence the term of office of the deputy, upon principles of agency,

is conterminous with the expiration of the office of his principal. (See *Greenwood* v. *The State*, 17 Ark. 332, 338, *Wilson* v. *Russell*, 31 N. W. (Dak.) 645, 650; *Boardman* v. *Halliday*, 10 Paige (N. Y.) 223, 230; *Hord* v. *State*, 70 N. E. (Ind.) 916, 922 and cases cited." *Ahia* v. *Cain*, 27 Haw. 770.)

"This statute does not in terms fix any specified period during which an appointment to the office of superintendent of the poorhouse and farm continues. But the same is also true of the offices of deputy clerk and deputy sheriff, the appointments to which continue during the pleasure of the clerk or the sheriff making the appointment. Yet it has never been doubted, so far as we are aware, that the term of a deputy sheriff or deputy clerk ends by operation of law with the term of the sheriff or clerk by whom he was appointed. The clerk and sheriff being charged with the general responsibility for the conduct of their respective offices, it is so plain that a deputy appointed by a predecessor should not hold over it was deemed unnecessary to say that the term of the deputy should end with the term of the clerk or sheriff who appointed him. So it is with the office of superintendent of the poorhouse and farm. The county board of commissioners are by law made responsible for the general supervision of the poorhouse and farm of the county, and it was never intended that the subordinate officer, appointed by them for the superintendence of the institution should have a longer term than those by whom he was appointed. The statutory scheme of general supervision by the board and subordinate supervision by the superintendent repels the idea of one board having the power to impose a superintendent on a succeeding board." *Sanders* v. *Belue*, 58 S. E. 764.

This doctrine dispels any doubt that may exist on the question that if by reason of the resignation of the former City Manager Mr. Jesús Benitez Castaño, all the Administrative officers appointed by him ceased in the discharge of their duties.

Although true that the City Manager, as Chief Executive of the Government of the Capital, has the direction and

general superintendence of all the officers of the Capital, as well as the inspection and superintendency of all public services, the administrative officers have powers and duties delegated to them by law which they exercise, not as agents of the City Manager, but as agents of the public corporation known as The Capital of Puerto Rico. The City Manager is not responsible for the negligence of said public officers in the discharge of their duties, but the corporation is, and therefore, said officers are not agents of the City Manager but his auxiliaries (adjuntos) in the current and ordinary sense of the word.

Finally we must bear in mind that the system of government of the Capital was adapted from the system in use in various States of the United States, of which the city of Dayton, Ohio, is a typical example.

This system of government (Council Manager system) requires men of experience in municipal functions that can manage efficiently all the services for the common benefit. In order to obtain this class of officers the establishment of the administrative profession is necessary, and for this purpose it is in turn required that municipal offices should not have a definite term of duration, that the officers be appointed instead of being elected, and that they favor a non partisan administration.

By virtue of the foregoing it is my opinion that the administrative officers of the Capital appointed September 11th 1931, upon the inauguration of the new system of government for the Capital, and to whom the law does not fix a definite term of duration, were appointed during good behavior, are not subject to separation at the will or discretion of the City Manager but only for the causes specified in the law through charges, hearing, and opportunity of defense, personally, or by means of an attorney at law.

Applying the principles outlined in the course of this opinion to the employees of the Capital of Puerto Rico, referred to in Article 39 of the law, we understand that these employees cease in their employment upon the ceasing of

the officer who appointed them, for the reason that generally, said employees are in fact the agents through which the administrative officer exercises the powers prerogatives and duties assigned to him by law, and these officers are responsible for the negligence of their employees in the discharge of their duties. Their positions are the creation of the Board of Commissioners which in turn fixes the powers and duties of their employment, the salary of the employee, and the necessity of the position for the public service.

> "The specific period may be inferred from the nature of the office and the duties of the officer. For example, when an inferior office is created, the tenure may be implied to be the same as that of the superior office to which the inferior is an adjunct. Such an implication is especially strong when the inferior officer is charged with minor matters; the general supervision and responsibility devolving on the superior officer." *Sanders* v. *Belue*, 58 S. E. 764.

In deciding the preceding question in this manner I have been guided by the majority rule which is condensed in the following paragraph taken from 70 A.L.R. 799, to wit:

> "In most jurisdictions where a board appoints an officer, or contracts for services, and the duties of the officer or the services to be rendered are duties delegated to the supervision of the board, such appointment or contract for a period beyond the term of the board is not valid. And the same rule applies to confidential relations, such as counsel for the board."

With regard to your other inquiry as to whether the nine commissioners and administrative officers of the Capital who took posesson of their offices on the 4th of January of this year are or are not a new administration, distinct from the former, I must inform you that in my opinion the Board of Commissioners is a continuing body that does not change even though the commissioners change. The same is applicable to the administrative board.

"There was no act constituting fraud in the execution of the contract alleged (one for teaching service) making the only question one of power of the board to make such a contract. The district school board is a corporation representing the district. It is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its individual members. An essential characteristics of a valid contract is that it is mutually binding upon both the parties to it." *Taylor* v. *School District*, 47 Pac. 758.

Respectfully,

B. FERNANDEZ GARCIA,
Attorney General.

I, Rafael Cabello, File clerk of the Department of Justice of Puerto Rico, Certify:

That the preceding is a true and exact copy of the opinion rendered by the Attorney General of Puerto Rico to Dr. Carlos M. de Castro, City Manager, on January 30th 1937, which appears on the files of this Department under my custody; And at the request of Gabriel de la Haba, Esq. I issue this copy which I sign and seal with the seal of the Department, this 13th day of November, 1942, cancelling Internal Revenue stamps for five dollars and seventy-five cents ($5.75).

(Sgd.) RAFAEL CABELLO,
File Clerk, Department of Justice.

APPENDIX E.

CERTIFICATE OF THE SECRETARY OF THE SENATE OF PUERTO RICO.

Showing text of Section 21 of Senate Bill No. 1 (subsequently enacted as Act No. 99), as originally introduced at the Regular Legislative Session of 1931, and as finally enacted.

I, Y. SOLA MORALES, Secretary of the Senate of Puerto Rico, do hereby

CERTIFY

That in accordance with the minutes and records of the Senate of Puerto Rico, of which I am in charge, the text of Article 21 of Senate Bill No. 1, of the Regular Session of 1931 of the TWELFTH LEGISLATIVE ASSEMBLY, entitled

"To establish a special government for the Capital of Puerto Rico, and for other purposes",

as it appears from the original of said bill, is as follows:

"Article 21.—The mayor will be the chief executive of the capital, and shall be elected by popular vote in the general elections that are to be held in Puerto Rico every four years in accordance with the provisions of the Organic Act and in accordance with the Electoral Law in force during each election with respect to other municipalities of the Island. The mayor will discharge the duties of his office during a term of four years and until such time as his successor, duly elected or appointed, takes possession of the office."

I FURTHER CERTIFY

FIRST: That the text of said Article 21, as it was finally approved by the Senate and the House of Representatives of Puerto Rico, is as follows:

"CITY MANAGER

"Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

SECOND: That in said minutes and records of the Senate of Puerto Rico no explanation appears for the reasons that motivated the amendments introduced to said article 21 of Senate Bill No. 1 hereinbefore mentioned.

AND AT THE REQUEST OF A PARTY IN INTEREST I issue these presents, in my office, on the twenty-third day of March nineteen hundred forty-four.

(Sgd) Y. SOLA MORALES,
Secretary.

Seal of the Senate of Puerto Rico affixed and a $1.00 Internal Revenue stamp cancelled.

APPENDIX F.

Memorandum of Decisions of United States Supreme Court enunciating Rule of the Respect to be accorded to Decisions of Territorial Courts upon Questions of local Territorial Law.

Sweeney v. Lomme, 22 Wall. (89 U. S.) 208, 213.

MILLER J.; *Montana Territory;* December 21, 1874.

Suit on a replevin bond, originally given by plaintiffs in error, *Sweeney, et al.*, to a sheriff, for the benefit of Lomme, defendant in error, then an attaching creditor. This Court said (pp. 212-213):

> "The first error assigned and mainly relied on is, that the bond having been given to Roberts, the Sheriff, this action cannot be maintained by Lomme, the party for whose benefit it was really given.
>
> "The question has been decided differently by different State Courts under precisely the same Code of practice.
>
> "Without expressing any opinion of our own on the question, we hold that as it is one which arises under their own Code of practice, we should, in this conflict of authority, adopt the ruling of the Supreme Court of Montana in the consideration of it."

Northern Pacific R. Co. v. Hambly, 154 U. S. 349, 361.

BROWN, J.; *Dakota Territory;* May 26, 1894.

Fellow servant case. Question whether members of track crew, and of train crew, are fellow servants. Decided both ways in different States.—Decided that they are, by the Supreme Court of Dakota. This Court, rather inclined also to that opinion, if it were to be treated as an independent question, yet says, with reference to the Dakota Court's decision:

> "While this construction, given by the Supreme Court of a Territory, is not obligatory upon this Court, it is certainly entitled to respectful consideration, and in a doubtful case might well be accepted as turning the scale in favor of the doctrine there announced."

Fox v. Haarstick, 156 U. S. 674, 678-679.

SHIRAS, J.; *Utah Territory;* March 4, 1895.

Judgment of Utah Supreme Court, affirming District Court judgment for damages, for refusal to assign shares of stock in a transportation company.

> "The record discloses the affirmative findings of the trial Court which, of themselves fully warrant the conclusion of law based upon them, that the plaintiff was entitled to recover. * * *
>
> "This was the conclusion reached by the Supreme Court of the Territory, * * *
>
> "It is true that this ruling of the Supreme Court of the Territory does not, even in a question of practice arising under the local law, preclude this Court from reviewing it, as would a decision of a State court in similar circumstances; *but unless a manifest error be disclosed, we should not feel disposed to disturb a decision of the Supreme Court of a Territory construing a local statute. So far from discovering manifest error, we concur with the Supreme Court of the Territory in their disposition of the question.*" (*Italics supplied.*)

Armijo v Armijo, 181 U. S. 558, 561.

PECKHAM J.; *New Mexico Territory,* May 15, 1901.

An accounting suit; the New Mexico Supreme Court had certified that it was unable to find the facts, "the appeal not having been perfected in such a manner as to bring them before that Court", which had "decided that in order to bring before it the facts", "it was necessary that a motion for a new trial should be made in the court below, and if such motion were not made the facts in the case were not brought before the appellate court".

MR. JUSTICE PECKHAM says (at p. 561):

> "This matter of practice in the courts of the Territory is based upon local statutes and procedure, and we are not disposed to review the decision of the Supreme Court in such case. *Sweeney* v. *Lomme,* 22 Wall. 208. Our jurisdiction to review judgments of Terri-

torial courts is found in the statute approved April 7, 1874, chapter 80, entitled 'An Act concerning the practice in Territorial courts, and appeals therefrom', 18 Stat. 27. * * *

"This statute constitutes our only right of review on appeals from the Territorial courts. *Apache County* v. *Barth*, 177 U. S. 538, 541; *Grayson* v. *Lynch*, 163 U. S. 468, 473."

"In the absence of any findings by the Supreme Court of the Territory, and also being without anything in the nature of a bill of exceptions, we have nothing on which to base a reversal of the judgment in this case. * * *

"The report of the referee authorized the judgment that was entered, and there is nothing whatever in the record to show that any error has been committed in the trial of the case."

Copper Queen Min. Co. v. Terr. Bd. Equalization of Arizona, 206 U. S. 474, 479.

HOLMES J.; *Arizona Territory;* May 27, 1907.

Question of interpretation of local Territorial tax valuation statute. Board had been sustained by Territorial Supreme Court. Company's contention for a different interpretation was that the statute had been taken from a Colorado statute which had been otherwise construed. Sustaining the Arizona Territorial Court's construction, MR. JUSTICE HOLMES said:

> *"On the other hand, while this Court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of a local statute adopted by the local court"* (*citing Sweeney* v. *Lomme; Northern Pac. R. Co.* v. *Hambly;* and *Fox* v. *Haarstick*; supra).

Then, after discussing the question on its merits (p. 479-48), MR. JUSTICE HOLMES concludes (at p. 479):

> "As an original question the construction adopted by the" [Territorial] "Supreme Court appears to us at least as reasonable as the opposite one contended for,"

and then proceeds to discuss the question there further (pp. 479-482), and concludes (p. 428) by affirming the judgment of the Arizona Territorial Supreme Court.

Lewis v. Harrea, 208 U. S. 309, 314.

FULLER, Ch. J.; *Arizona Territory;* February 24, 1908.

Bank receiver's suit to set aside deed made by judgment debtor to his wife, and have the property subjected to payment of the bank's judgment. The deed was made before the indebtedness accrued to the bank; but was not acknowledged until after it had accrued. The Arizona Supreme Court, interpreting the local statute, held that the deed did not become effective as a conveyance, until it was acknowledged. This Court said (p. 314):

> "The construction of the statute by the local courts is of great, if not of controlling, weight." (*Citing Sweeney* v. *Lomme; Northern Pac. R. R. Co.* v. *Hambly;* and *Copper Queen Consolidated Mining Co.* v. *Territorial Bd. of Equalization of Arizona; supra.*)

English v. Arizona, 214 U. S. 359, 361.

MCKENNA, J.; *Arizona Territory;* June 1, 1909.

Tax collection case: District Court's judgment affirmed by Territorial Supreme Court. This court said:

> "The first contention is repeated here, and it invokes our construction of the statutes of the territory against that made by the Supreme Court. If there were doubt, we should certainly lean to the construction given by the Supreme Court". [Citing *Copper Queen* case, *supra*] "But we think there is no doubt".

[But then proceeding non-the-less to discuss the question involved there, on the merits; and to uphold (pp. 361-365) the Territorial Supreme Court.]

Santa Fe County v. New Mexico, ex rel. Coler, 215 U. S. 296, 305, 307.

McKenna, J.; *New Mexico;* December 20, 1909.

Special Tax case:

> "Unless in a case of manifest error, this court will not disturb a decision of the Supreme Court of a Territory construing a local statute". *ib* p. 307.

[This Court manifestly agreed, on the merits, with the Territorial Supreme Court; and proceeded to discuss that Court's decision *on the merits.*]

Albright v. Sandoval, 216 U. S. 331, 339.

McKenna, J.; *New Mexico Territory;* February 21, 1910.

Contest over fees of office of County Assessor; depending on incumbency of office; and upon interpretation of Territorial statute, as to whether residence in the County was a requisite to continuance in holding County office. [New County of Sandoval having been formed, within which Mr. Sandoval was residing, who had theretofore been elected County Assessor of the earlier larger County of Bernalillo, from which Sandoval County was split off]. The Territorial Supreme Court had held continued residence in the County not essential. This Court said (p. 339):

> "And that construction we are not disposed to disturb" (*Citing Fox* v. *Haarstick* and *English* v. *Arizona, supra.*)

Lewers & Cooke v. Atcherly, 222 U. S. 285, 294.

Holmes, J.; *Hawaii;* December 18, 1911.

Appeal from decree of Territorial Supreme Court, refusing registration of title to land devised through an oral will in 1844, reported to the King, as required by the local laws in those days, "and there is evidence that the King disapproved it, because of Kalakaua's youth"; and that

in 1849 the Land Commissioner adjudged the land to Kinimaki in fee simple. After detailing the history, including a decree, in 1858, in favor of Kalakaua, who afterwards became King, and after further dissension, MR. JUSTICE HOLMES says:

> "Acting on this rule, as to the application in practice, we see no sufficient reason for not following the local Court. The" [Territorial] "Supreme Court came to the conclusion that the * * * decree of 1858 was wrong.
>
> "On this point there is every reason for attributing great weight to the decision of the Court on the spot" (p. 294)

Treat v. Grand Canyon R. Co., 222 U. S. 443, 452.

HOLMES, J.; *Arizona Territory;* January 9, 1912.

Tax injunction suit, by railway. The Territorial Supreme Court had affirmed the decree of the District Court; holding the railway exempt under a local ten year tax exemption statute enacted to encourage railroad building, and holding the appellee company, purchaser at foreclosure, entitled to succeed to the exemption. This Court said:

> "No doubt a strong argument can be made and was made for a different view, * * *. But the considerations that prevailed are cogent and so obvious as not to need statement, * * *. The courts of the Territory have given to the railroad the rights that it claims, as against the tax authorities seeking to levy the tax. The only question is whether any sufficient reason appears for not following the construction given to the local statute by the Territorial court, when that construction is inherently reasonable, is at least the first to strike the mind, and is one that protects private rights. It is enough to answer that on the principle followed so far as may be by this Court, there is no such manifest error as to warrant us in reversing the decisions below." [*Citing Fox* v. *Haarstick*, and *English* v. *Arizona, supra*].

Ker v. Coudens, 223 U. S. 268, 279.

HOLMES, J.; *Philippine Islands;* February 19, 1912.

Question of ownership, under the Spanish Law of Accessions, of the shore, by accretion and alluvion; a vexed question,

MR. JUSTICE HOLMES says (at p. 275-276):

> "That the question is a vexed one is shown not only by the different views of Spanish commentators, but by the contrary provisions of modern Codes, and by the occasional intimations of the doctors of the Roman Law."

The Philippine Supreme Court had held (p. 275) that the title to the accretions remained in the Government.

MR. JUSTICE HOLMES, after a full discussion (at pp. 275-279) of Roman, Spanish, French, Italian, Mexican, Chilean, and Louisiana sources, concludes (at p. 279);

> "The court of first instance below refers to judgments of the Supreme Court of Spain that seem to look in the same direction. We have neither heard nor found anything on the other side that seems to us to approach the foregoing considerations in weight, *not to speak of the respect that we must feel for the concurrent opinion of both the Courts below upon a matter of local law with which they are accustomed to deal.*" (Italics supplied)

Clason v. Matko, 223 U. S. 646, 653.

MCKENNA, J.; *Arizona Territory;* March 11, 1912.

Action to quiet title to a mining claim; MR. JUSTICE MCKENNA says (pp. 652-653):

> "The construction of the Supreme Court of Section 3241 of the Revised Statutes of the Territory is attacked. That section required, before its amendment in 1907, that in case of a relocation of a claim * * *.
>
> "The contention is that this section, properly considered, applied only to 'abandoned property' and did not apply to forfeited property, * * *.

"Of course, there may be a distinction between the abandonment of a claim and its forfeiture, but the question does not turn upon the distinction only, but upon what the statute means, considering all of its words; and, considering them all, we think they show quite clearly that no distinction was intended. • • •.

"Even if we should concede that the statute is ambiguous, we should certainly lean to agreement with the Supreme Court of the Territory". (*Citing Fox* v. *Haarstick; Armijo* v. *Armijo; English* v. *Arizona; Santa Fe County* v. *ex rel. Coler* v. *New Mexico;* and *Albright* v. *Sandoval; supra.*)

Gray v. Taylor, 227 U. S. 51, 56-57.

HOLMES, J.; *New Mexico Territory;* January 20, 1913; *County seat fight.* Question, whether attempted change of County seat was void.

After disposing of some objections urged under the Organic Act of Congress, this Court says:

"However it may be as to the foregoing question, which arises under an Act of Congress, the other objections are of a kind as to which we have often intimated our strong leaning toward following the local courts, and therefore will not be discussed at length" (pp. 56-57).

[But none-the-less this Court does actually discuss them (pp. 57-58), and was apparently in accord with the conclusions of the Territorial Supreme Court.]

Cordova v. Folgueras, 227 U. S. 375, 378-379.

HOLMES, J.; *Puerto Rico;* February 24, 1913.

Filiation suit. MR. JUSTICE HOLMES says:

"It is objected that the Supreme Court of Spain has construed the fourth transitory provision otherwise • • •. The construction adopted in Porto Rico at least does no violence to the words of the statute; it concerns local affairs under a system with which the Court of the Island is called on constantly to deal, and

we are not prepared, as against the weight properly attributed to the local decisions, to say that it is wrong." (Citing *Gray* v. *Taylor, supra.*)

Phoenix R. Co. v. Landis, 231 U. S. 578, 579-580.

HUGHES, J.; *Arizona;* December 22, 1913.

Death Case. District Court's judgment affirmed by Territorial Supreme Court, holding that under a local statute the action was for the benefit of the estate, and that it was not necessary for the plaintiff, administrator, to allege or prove the existence of beneficiaries, or the amount of the damages suffered by them,—following its own earlier decisions, in which it had reviewed the history of the legislation.

MR. JUSTICE HUGHES says:

"This court has frequently stated that it is disposed to accept the construction which the Territorial Court has placed upon a local statute" [*Citing earlier cases, supra*]. "The applicable considerations gain in force where, as in this case, the construction of the statute deliberately established and followed, has been reaffirmed upon the eve of statehood; and we are of the opinion that the ruling of the Supreme Court of the Territory of Arizona should not be disturbed."

Santa Fe Central Ry. Co. v. Friday, 232 U. S. 694, 700.

HOLMES, J.; *New Mexico;* March 23, 1914.

Action for personal injuries. MR. JUSTICE HOLMES says (pp. 698-700):

"The only argument addressed to us is an attack upon the jurisdiction of the court that tried the case. * * *

"But it is said that the jurisdiction of these courts was to be 'as limited by law', that that means by Territorial legislation, and that a Territorial statute provided * * *. Thus, it is argued, exclusive jurisdiction of cases like the present was transferred to the County District Courts.

"But it has been held for many years, that the purpose and effect of these statutes was to give the Judges of the Supreme Court sitting in the County District Courts authority to hear cases arising under Territorial laws, * * *. *We should not decide against the local understanding as a matter of purely local concern unless we thought it clearly wrong,* instead of thinking it, as we do, plainly right." (*Citing Phoenix Ry. Co.* v. *Landis, supra.*) (*Italics supplied.*)

Nadal v. May, 233 U. S. 447, 545.

HOLMES, J.; *Puerto Rico;* April 20, 1914.

Error to the District Court of the United States for Puerto Rico. Suit by Rafael Martinez Nadal to establish his title to one-half interest in a plantation, "Carmen", as devisee of his aunt. Question of the effect, under Puerto Rico laws relating to conjugal partnership, of a conveyance by the aunt's husband to a third party. MR. JUSTICE HOLMES says (pp. 453-454):

"Both sides agree that the wife's assent to a conveyance by her husband was made necessary for the first time by section 1328 of the Civil Code of March 1, 1902. Unless that Code went into effect at its date it did not apply to the conveyance of June 2." (*Discussing the history of the enactment of the four Puerto Rican Codes of 1902.*) "It is impossible to know how many or how important tranactions may have taken place on the faith of these repeated solemn assurances, *and apart from the general unwillingness of this Court to overrule the local tribunals upon matters of purely local concern* (*Santa Fe Central Ry. Co. v. Friday,* 232 U. S. 694, 700), it is not too much to say that the decisions have become a rule of property, even if we did not think, as we do, that probably the Secretary's certificate expressed the legislative will." (*Italics supplied.*)

Diaz v. Gonzalez, 261 U. S. 102, 105-106.

HOLMES, J.; *Puerto Rico;* February 19, 1923.

Suit by respondents to establish nullity of a sale of their land while they were all minors. The Supreme Court of Puerto Rico upheld the sale, and ordered the complaint

dismissed (27 P. R. Rep. 364), but was reversed by the Circuit Court of Appeals (276 Fed. 108), following another decision made by it at the same term (*Agenjo* v. *Agenjo*, 276 Fed. 105). This Court granted *certiorari*, reversed the Circuit Court of Appeals, and affirmed the judgment of the insular Supreme Court.

The father of the respondents died in 1904, and the title to the land passed to his widow and children. The land lay in the judicial district of Humacao, in Puerto Rico. The widow obtained authority to make the sale from the District Court of another judicial district [San Juan], and the sale was made. MR. JUSTICE HOLMES said (p. 103): "This suit proceeds on the ground that only the Court of the judicial district where the land was situated had power to authorize the sale of the minors' interest in the land."

Analyzing and comparing various provisions of the Civil Code of Puerto Rico and those of the Code of Civil Procedure, and referring to earlier decisions of the insular Supreme Court, and to comments by the commentators Manresa and Scaevola, MR. JUSTICE HOLMES says (at p. 105):

> "We will not repeat the argument quoted from Manresa and Scaevola that jurisdiction is a matter of adjective law and that the general provisions with regard to it are not repealed by a repeal of the substantive law or change in the Civil Code. 26 P. R. 631, 632. We will do no more than note Manresa's conclusion that although it would be more prudent to apply to the Judge specially designated, any Judge having jurisdiction of this class of cases is made competent by the submission implied from invoking his action. The distinction taken seems to be similar to that which we take between jurisdiction and venue. *Martorell* v. *Ochoa*, 25 P. R. 707, 729. A mistake as to the latter is waived by submission, *Lee* v. *Chesapeake & Ohio Ry. Co.*, 260 U. S. 653, and in the Porto Rican law an *ex parte* application is an adequate submission. This is a perfectly intelligible view, and when we are assured by the Supreme Court that it long has been taken, 28 P. R. 729; 26 P. R. 634; interrupted only by a momen-

tary obstruction caused perhaps by accepting too broadly and absolutely an expression in *Garzot* v. *De Rubio*, 209 U. S. 283, 303, we see no reason for not taking it here. The fact alleged that this interpretation of the law has become a rule of property, 25 P. R. 730, is very important and is not weakened by there being only a small number of decisions on the point. If it has been accepted by the practices of the community it should not be disturbed except upon an unescapable conclusion that it is wrong."

Mr. Justice Holmes then follows this upon with his famous observation, so frequently quoted, that (pp. 105-106):

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299. *Nadal* v. *May*, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books. In this case a slight difference in the caution felt in dealing with the interest of minors (*Baerga* v. *Registrar of Humacao*, 29 P. R. 440, 442), and a slight change of emphasis in the reading of statutes, explain the divergence between the Supreme Court and the Circuit Court of Appeals. Our appellate jurisdiction is not given for the purpose of remodeling the Spanish American law according to common law conceptions except so far as that law has to bend to the expressed will of the United States. The importance that we attribute to these considerations led to our granting the writ of certiorari and requires us to reverse the judgment below."

Villanueva v. Villanueva, 239 U. S. 293, 298-299.

WHITE, C. J.; *Philippine Islands;* December 6, 1915.

Divorce and Partition of conjugal community property.

CHIEF JUSTICE WHITE, after stating the case, and the assignments of error, says (pp. 298-299):

> "Under these conditions it is apparent that all the errors relied upon * * * in their essence only dispute the correctness of the facts found by both the Courts below and but challenge the accuracy of the principles of the local law which were applied to the facts for the purpose of deciding the cause. Under these circumstances * * * we content ourselves with saying that we are of the opinion, after examining and weighing them all, that they are without merit for the following reasons: (a) Because insofar as they dispute the concurrent findings of fact of both the courts below they entirely fail to give rise to that conviction of clear error which must be entertained in order to authorize a reversal of the findings, *Texas & Pacific Ry.* v. *Louisiana R. R. Commission,* 232 U. S. 338; *Gilson* v. *United States,* 234 U. S. 380, 383-384; and (b) *Because insofar as they challenge the correctness of the application which the courts made of the local law* to the facts in deciding the cause, *they are totally deficient in that persuasive strength which it is essential they should possess in order to produce the conviction that clear error was committed* by the court below, *and thus lead us to depart from the principles by which we follow and sustain the local law as applied by the court below unless we are constrained to the contrary by a sense of clear error committed".* (Citing *Ker* v. *Couden; Santa Fe Ry.* v. *Friday; and Nadal* v. *May; supra.*) (*Italics supplied.*)

Fernandez v. Ayllon y Ojeda, 266 U. S. 144, 146

HOLMES, J.; *Puerto Rico;* November 17, 1924.

Suit to set aside sale of land in Puerto Rico formerly belonging to the respondents (plaintiffs), on the ground that the sale made by their testamentary tutor or guardian was void because his appointment had not been recorded in the registry, and no bond given nor oath taken by him

as required by law. The defendants, the petitioners in this Court, relied upon title by the ordinary prescription of ten years possession under a just title and in good faith. MR. JUSTICE HOLMES says (pp. 145-146):

> "The sale took place under an order of the local District Court having jurisdiction over the minors and over the tutor, but the Circuit Court of Appeals overruling the Supreme Court of Porto Rico held that this was not sufficient to constitute just title, * * *. (p. 145).
>
> "The decision of the Supreme Court of Porto Rico turned upon local statutes and local traditions. The caution to be used before overruling such decisions was emphasized in a recent case where the action of the Supreme Court was open to greater doubt than here. *Diaz* v. *Gonzalez*, 261 U. S. 102, 106. For here apart from the respect due to the local judgment its reasoning commands our assent" (p. 146).

This Court accordingly reversed the Circuit Court of Appeals and upheld the insular Supreme Court.

Matos v. Alonso Hermanos, 300 U. S. 429, 432.

McREYNOLDS, J.; *Puerto Rico;* March 29, 1937.

Action by a purchaser of cattle to have the sale annulled and to recover the purchase money, because the cattle, although apparently in good condition, were suffering from tuberculosis from which some died and because of which others were condemned and destroyed by the Health Department.

The Supreme Court of Puerto Rico in reversing the local District Court had held that the sale contract was not void but was voidable at the purchaser's election; that its legal effect and the remedy for its violation were within local Code provisions relating to "redhibitory contracts"; that a limitation of forty days applied; and "that Section 1397 does not exclude the transaction made in this case from the field of warranties".

The Circuit Court of Appeals held the contract of sale illegal—non-existent—as to the cows which had died or

been condemned; and to that extent reversed the judgment of the insular Supreme Court. A dissenting opinion, however, approved the Supreme Court's construction of the Code, and its judgment, in its entirety [81 F. (2d) 930, 934].

This Court said (p. 432):

> "Manifestly the solution of the controversy must turn upon the meaning and effect of the above quoted sections of the Civil Code—local law of Puerto Rico.
>
> "Considering the argument here, the divergent views below, the authorities cited, and 'recognizing the deference due to the understanding of local courts upon matters of purely local concern,' it becomes impossible for us to entertain 'a sense of clear error committed' by the Supreme Court. Following the view so often approved, we think the Circuit Court of Appeals should have accepted and affirmed the ruling there announced after much consideration. *Nadal* v. *May*, 33 U. S. 447, 454; *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299; *Diaz* v. *Gonzalez*, 261 U. S. 102, 105.

Waialua Co. v. Christian, 305 U. S. 91, 109.

REED, J.; *Hawaii;* November 7, 1938.

Two cases concerning the validity of a lease, a contract of maintenance, and a deed conveying or assigning rights of an incompetent to an undivided interest in land in Hawaii. The Supreme Court of Hawaii set aside the deed, and refused to set aside the contract or lease. The Circuit Court of Appeals for the Ninth Circuit reversed (94 F. (2d) 806).

This Court, after stating the facts (pp. 94-103), the decision of the Supreme Court of Hawaii (pp. 103-105), that of the Circuit Court of Appeals (pp. 105-106), "*The Status of the Supreme Court of Hawaii*" (pp. 106-108), and discussing generally the matter of the "*Review of its Decisions*" (pp. 108-109), concludes (pp. 109-110):

> "While the 34th section of the Judiciary Act is not applicable to territories, the arguments of policy in favor of having the state courts declare the laws of the state are applicable to the question of whether or not

territorial courts should declare the law of the territories with the least possible interference. It is true that under the appeal statute the lower court had complete power to reverse any ruling of the territorial court on law or fact; but we are of the opinion that this power should be exercised only in cases of manifest error. * * *

"In so far as the decisions of the Supreme Court of Hawaii are in conformity with the Constitution and applicable statutes of the United States and are not manifestly erroneous in their statement or application of governing principles, they are to be accepted as stating the law of the Territory. Unless there is clear departure from ordinary legal principles, the preference of a federal court as to the correct rule of general or local law should not be imposed upon Hawaii.

"*Decision of the Supreme Court of Hawaii.*—To adopt the legal principles applied by the territorial supreme court in these cases as rules of decision in that jurisdiction, or to construe instruments as it interpreted them, is not manifest error.

"What ever may be the better rule as to the voidableness of the transfer documents of an incompetent, it is not clearly wrong to select the one here chosen.

"The construction of the contract of maintenance by the territorial court of last resort is likewise defensible. The lower court, itself, said the assignment of rents due to the incompetent 'by virtue of being.... devidee under the will....during the term of the natural life of her' the incompetent (see note 5, *supra*), might mean 'that the ward assigned all rents including those to which she might be entitled under the lease to the company and any other lease.' The minority opinion reached this conclusion. Although on consideration of the entire contract the majoritly reached a different answer, the interpretation of the Supreme Court of Hawaii is not manifestly erroneous. Nor do we see any occasion to re-examine the interpretation that the deed of May 2, 1910 (the relevant portions of which are set out above, *ante*, p. 96), conveyed the rents, issues and profits, assigned to Mrs. Kentwell."

Accordingly this court reversed the decree of the Circuit Court of Appeals, and affirmed that of the Supreme Court of Hawaii.

Sancho Bonet, Treasurer of Puerto Rico, v. Yabucoa Sugar Co., 306 U. S. 505, 509-511.

BLACK, J.; *Puerto Rico;* March 27, 1939.

Sancho Bonet, Treasurer of Puerto Rico, v. Texas Co., 308 U. S. 463, 470-472.

DOUGLAS, J.; *Puerto Rico;* January 2, 1940.

People of Puerto Rico v. Rubert Hermanos, Inc., 315 U. S. 637, 646.

BYRNES, *J.; Puerto Rico;* March 16, 1942.

These three cases are commented upon in the body of this brief (Point I, *ante*, pp. 8-17). Accordingly no comments are made upon them here.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

PETITIONER'S REPLY BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

PETITIONER'S REPLY BRIEF.

STATEMENT OF THE CASE.

A. (1). Under this heading in respondent's brief opposing counsel suggest that there are certain facts not stated in petitioner's brief that should be considered and weighed, and mention first the fact that Resolution No. 373, adopted by the Respondent Board on April 5, 1939, removing the petitioner from office, contained findings of fact convicting petitioner of "dereliction, inexcusable negligence and im-

moral and improper conduct in the discharge of the duties of his office." Opposing counsel then further assert that the District Court of San Juan upheld the resolution of the Board, "stating that the evidence was conflicting on these issues"; and after reiterating the details of the judicial procedure by which the removal of the petitioner was adjudged unlawful and his reinstatement ordered, they add that:

> "The chief executive officer of the largest city in Puerto Rico who had been condemned by his fellow citizens as derelict, inexcusably negligent, and guilty of immoral and improper conduct, was ordered back into the office of City Manager of San Juan."

If this were a fair statement of the related facts it would more than suffice for us to point out that those facts are wholly irrelevant and immaterial to any question now before this Court, because they bear solely upon the question of the legality of petitioner's removal from office, an issue long since finally adjudicated against the contentions of the Board, and in favor of the petitioner.

(2). But the statement is not correct. It is one of those garbled mixtures of half-truth, fiction and false innuendo that can be more misleading and deceptive than unadulterated prevarication. It amounts to a transparent attempt to prejudice the petitioner in the eyes of this Court by reiteration of ill-founded and false accusations from which the petitioner has long since been completely vindicated.

(3). The real facts in this connection are as follows: The Board originally made 19 separate charges against the petitioner; abandoned 12 of these at the hearings, by not taking any evidence whatever as to them; and abandoned 3 more after taking evidence on them, by electing to make no findings thereon. As to the remaining 4 charges, on which the Board entered findings adverse to petitioner, none of them contained any allegation of "immoral and improper" conduct, each of them alleging only neglects of duty.

The District Court found no legal evidence whatever to sustain the findings of the Board on two of the four counts on which the Board made findings; declared that the evidence on the remaining two counts was conflicting; expressly held there was nothing in the evidence to support the Board's conclusion that petitioner had been guilty of "immoral and incorrect conduct"; and clearly indicated that its decision to uphold the validity of petitioner's removal was due solely to its view, afterward reversed by the Insular Supreme Court, that the District Court had no legal power to reverse a finding of fact made by the Board in such a case, unless there was no evidence whatever to support the finding. All of this is in the opinion of the District Court (FR 38, 41-45).

It remains only to remind this Court that the remaining two counts were ruled out, and petitioner's removal held to have been unlawful, by the Insular Supreme Court in its judgment of June 28, 1940, which was affirmed by the Circuit Court of Appeals on January 10, 1941, and became final on denial of certiorari by this Court on October 13, 1941.

(4). It follows that the statement last above quoted from respondent's brief, in order to conform it to the truth and the law of this case, should read:

> "The chief executive of the largest city in Puerto Rico, who had been unjustly accused of official neglect and misconduct, and unjustly removed from his office, by a few of his fellow citizens comprising the Board of Commissioners, was by the courts finally vindicated and ordered to be reinstated in his office."

B. Among their additions to the statement of the case, opposing counsel cite the fact that petitioner availed himself of Rule 39 (b) of the Circuit Court of Appeals to obtain a summary disposition of the Board's appeal to that Court from the original judgment of the Insular Supreme Court, while now urging here that that rule is invalid. This, too, is wholly immaterial to present issues. However, we may

properly remark in that connection that as long as that rule remains unabrogated counsel representing litigants in Puerto Rican cases will be obliged to observe it, and take every proper advantage of it, regardless of their views of its propriety or validity.

C. Opposing counsel also, in their supplemental statement of the case, referring to the date of the order of this Court denying certiorari in the former proceedings, October 13, 1941, seek to beg the whole question here, by making the bald statement that: "Fortunately, by that time the term of office of the petitioner had already expired." That, of course, is the present contention of the Board; and we are ready to concede that, if it were true, it would be fortunate from the viewpoint of that body and its counsel; but it remains for this Court to say whether or not it is true.

D. Our statement that the Insular Supreme Court treated the question of the tenure of the city manager under section 21 as a mixed one of law and fact is contradicted by our opponents; but is clearly borne out by the opinion of that tribunal.

In that part dealing with alleged official and public interpretation of the statute, that Court expressly mentioned, took judicial notice of, and considered the bearing and effect of a few isolated facts, basing largely thereon its interpretation of the statute as prescribing a four-year term (R. 44-45).

E. (1) The accuracy of our statement on pages 4 and 5 of petitioner's brief, to the effect that the Board, in its brief in the original proceedings in this case before the Insular Supreme Court, not only did not advocate its present theory of a four-year term, but actually took an exactly contrary view, is challenged by our opponents. That statement is based on the portions of the mentioned brief which are quoted in petitioner's motion for reconsideration, as set forth in the record beginning on page 51. The citation

t that point in our brief to page 50 of the record is a lerical error, but the statement is, we believe, correct.

(2) We have substantially verified the quotations as they ppear in the record, with a certified copy of the original rief in Spanish, obtained from the Clerk of the insular Supreme Court, and which we have available for examination by this Court if desired. As we understand the language employed, the Board's argument at that time was hat the term of the City Manager was during good behavior, subject to removal by the Board for misconduct, vith an added contention that the decision of the Board was inal and not reviewable by any court. For example, the rief in question, at page 29 thereof, and as quoted in petitioner's motion for reconsideration at page 52 of the record, says:

> "As it will be seen, the City Manager of the Capital is the only officer in Puerto Rico who retains, independently from the appointing power, his office during good behavior. That is, the tenure of his office is not limited and he holds the same until the tim when the appointing Board should be of the opinion that he has failed to observe good conduct or that he has performed, in addition to and independently from the good behavior, any of the acts specified in section 22 of the same statute."

(3) Is there any substantial distinction in principle between that statement of the views of the Board in 1940, and those advocated by the petitioner throughout these proceedings? We perceive none, except the possible contention above mentioned to the effect that the Board is the final arbiter,—no longer tenable in view of the precedent established by final adjudication in this very case.

POINT I.

There appears to be no great difference of opinion between opposing counsel and ourselves with regard to the general scope and meaning of the deference rule in relation to Puerto Rican cases. We are in complete accord with much that is said under this Point in respondent's brief, concerning judicial precedents affecting that rule.

But a diametrical difference exists between us on the question of the proper application of that rule in this particular case, or in other words on the question whether the Insular Supreme Court was, or was not, plainly, manifestly and inescapably wrong in its interpretation of the statute, within the meaning of that rule.

For the reasons set forth in the brief for petitioner we are convinced that the decision of the Insular Supreme Court with which we are here concerned is a typical example of what is meant by plainly, manifestly, and inescapably wrong, and that the Circuit Court of Appeals erred in not so holding. A careful consideration of respondent's brief fails to disclose any argument of substantial weight against that conclusion.

However, we wish to clarify a statement in the argument in our brief under Point I, on page 15, paragraph E, to the effect that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court.

Our opponents take issue with our statement in petitioner's brief (Point I-E, p. 15) that:

> "E. Examination of all of these cases shows that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court."

Our opponents say that this Court's refusal to grant certiorari to the Circuit Court of Appeals for the First Circuit in several cases where that Court had affirmed the judgments of the Supreme Court of Puerto Rico are instances

where, as opposing counsel say (Brief for Respondent, p. 12):

> "Respondent submits that this Court has repeatedly refused to make such an examination."

But of course we were referring in our brief to cases within the "statutory jurisdiction" given by the Congress to a party to a cause to appeal [or sue out a writ of error] *as a matter of right* from a Territorial court to a Circuit Court of Appeals, or to this Court prior to the time when that right of appeal or writ of error from the Territorial courts direct to this Court was abolished by the Congress.

That statutory right to a party to appeal or sue out a writ of error, as a matter of strict legal right granted by the Congress, carries with it of course the correlative duty of the reviewing court to exercise the jurisdiction thus vested in it by the Legislative power.

But no party possesses any such statutory right to a writ of certiorari from this Court, and this Court is under no statutory obligation to issue such a writ. No such right is granted by the Congress to a party to a cause. It is axiomatic that this Court does not sit for that purpose. As this Court's Rule 38(5) expressly states:

> "5. A review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor."

If the language of our brief, above quoted, is broad enough on its face to appear to include such discretionary writs of certiorari, then permission is requested to consider it amended so as to exclude them. It was, of course, intended to refer only to that "statutory jurisdiction" vested in a reviewing court which may be invoked as a matter of right by a party in a cause.

POINT IIA.

Under this caption in their brief our resourceful opponents charge us with having tacitly admitted that section 21 of the insular statute under consideration is not wholly clear and free from ambiguity. It is asserted in substance that our references to the Constitutional origin of the formula adopted by the Puerto Rican Legislature in that section to prescribe the tenure of the city manager, and to the judicial precedents showing that that formula as employed in the Constitution has been universally understood and held to mean life tenure subject to removal only for misconduct, constitute in themselves a resort to extrinsic aids and an admission of at least some ambiguity in the section sufficient to warrant such resort (Resp. Br. pp. 21-22).

It could as well be argued that to refer to a standard dictionary for the ordinary meaning of a word used in a statute, or to refer to a recognized scientific authority or to a sound judicial precedent for the correct significance of a word or phrase of art employed by the legislature, would amount to a resort to extrinsic aids for the interpretation of the statute; and no doubt that is true in a technical and limited sense. In that sense no statutory language could be regarded as wholly free from ambiguity, for it is always possible to raise some quibble over the ordinary meaning of the plainest word or provision, or to contend that it is employed in some special sense different from its usual acceptance. It would then logically follow that the established rule of statutory construction,—experience, or whatever it may be called,—to the effect that where the language of a statute is clear it will be enforced according to its plain terms, should be completely abandoned, and every statutory provision, no matter how plain and direct its terms, treated as doubtful and ambiguous until filtered through judicial examination in the light of extrinsic circumstances.

We perceive no good purpose to be served by a continuation of that discussion. From the viewpoint of the petitioner the essential point here is that the words "shall hold

office during good conduct," as used in section 21 to describe the tenure of the city manager, are precisely as clear and free from ambiguity as is the synonomous clause "shall hold their offices during good behavior" employed in the Federal Constitution to confer life tenures upon Federal judges. Either formula carried out according to the ordinary sense of its literal terms must necessarily result in life tenure subject to removal for misbehavior, because so long as the incumbent observes good behavior no legal ground for his removal arises.

Counsel for respondent pose these questions: "Why attach to the phrase "during good conduct" as used by the Puerto Rican Legislature in Act No. 99, the same meaning as given it by this Court in the *Hennen* or in the *Martin* cases? Why thus assume that the Puerto Rican lawmakers, in 1931, were cognizant of such meaning and intended so to use the phrase, a hundred years later?"

We ask in turn, is it reasonable to suppose that the Insular Legislature selected and included that phrase in section 21 by a mere coincidence, or that a majority of its members did not know or take the trouble to find out how it was interpreted by this Court? In that connection it should be borne in mind that the Insular Legislature deliberately rejected the original text of that section, expressly providing for a four-year term, and substituted an entirely new text including the phrase in question. (Br. for Pet., App. E, pp. 61-62.)

And finally, so far as this particular aspect is concerned, there is the well established principle that where a legislature adopts without reservation a statutory provision of another legislative jurisdiction, it is presumed also to have adopted the construction which had been placed on the provision by the court of last resort of that jurisdiction. *Henrietta Mining and Milling Co.* v. *Gardner*, 173 U. S. 123, 130; *James* v. *Appel*, 192 U. S. 129, 135; *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 478.

Our able opponents, as part of their argument under Point IIA, three times repeat in substance their contention

that Mr. Benítez Castaño, first city manager of San Juan, "who," they say, "was instrumental in the drafting of the statute," contemporaneously with the approval thereof, expressed his understanding that his term of office was limited in point of time and would end on the Tuesday following the first Monday of 1937; and cite Appendix B of our brief, page 48 (Resp. Br. pp. 21, 26, 27). This relates to the second of the two letters written by Mr. Castaño on September 11, 1936, to the Board, the first requesting leave of absence for 150 working days (until some time in March, 1937) and tendering his resignation effective at the end of that period, and the second further explaining his reasons for such action and offering, if the Board desired at any time, to return to duty (Br. for Pet., App. B, pp. 47-48). In the second letter Mr. Castaño wrote, among other things:

> "Upon accepting the office of City Manager, I did so completely determined to fulfil this office until the Tuesday following the first Monday of 1937, (in this case 4th of January, 1937)."

It will be observed that counsels' statement that Mr. Castaño was instrumental in the drafting of the statute is entirely outside the record, and is quite indefinite as to what part, if any, it is claimed he took in the preparation of the bill, or what opportunity or qualifications he had for determining the intent of the tenure provision in section 21. Assuming counsels' statement is well founded, and that Mr. Castaño prepared or assisted in preparing the draft of the bill, it nevertheless would seem unlikely that he was responsible for the final text of section 21, prescribing the tenure of the city manager as "during good conduct," because the Legislature itself struck out the original text of that section, and substituted the entirely different present text (Br. for Pet., App. E, pp. 61-62).

It should also be noted that the above-quoted part of Mr. Castaño's letter is distinctly enigmatic, and is far from the positive and definite utterance counsel would have us believe it to be. The date mentioned does not correspond

exactly to any date fixed by the statute. Perhaps Mr. Castaño meant to say simply the first Monday of 1937, which was the date of installation of the first elective commissioners, and meant to indicate that he had originally intended to serve until then regardless of the question of legal tenure.

In any event, whatever Mr. Castaño may have meant by the quoted statement, it could not have been that he believed on September 11, 1936, when he wrote it, that his official term would end on the date specified, for in his prior letter of the same date he had asked for a leave of absence extending well into March, 1937, and had tendered a resignation not effective until the expiration of that leave, and in his second letter did not modify the first in those particulars.

Among the further contentions advanced by opposing counsel under their Point IIA, in support of their view that the phrase "during good conduct" has no definite or well settled meaning, appears their statement that as a matter of fact it has not in all cases been construed as implying or being equivalent to life tenure, and in support of that statement they cite *Stuart* v. *Ellsworth*, 105 Me. 523, 75 A. 59, and *Robertson* v. *Coughlan*, 196 Mass. 538, 82 N. E. 678 (Resp. Br. p. 24). Neither of the cited cases affords the slightest support for such a contention. We have been unable thus far to discover any judicial precedent that does afford such support, and apparently opposing counsel have been equally unsuccessful in that quest.

Another contention of our opponents is in substance that endless complications and undue embarrassments in the governmental structure and machinery are easily foreseeable if the city manager is held to have a life tenure (Resp. Br. p. 26). This, of course, is a matter of expert opinion on a controversial and unsettled matter of municipal governmental policy. Many cities in the United States adhere in both theory and practice to the view that the chief executive of the municipal government should have a life tenure, subject to removal only for cause. See City Man-

ager Government in the United States, 1940, Stone, Price and Stone, pp. 61, 64. We think it clear that the Puerto Rican Legislature, in the statute under consideration, followed a similar view. If the Board or the People of San Juan want the law changed in that particular, they should present the matter to the Legislature, and not ask the courts to make the change by the process of judicial legislation.

POINT IIB.

Opposing counsel are quite wrong in their assumption that for the purpose of the discussion of this point, it is conceded or assumed that the city manager's term of office is four years (Resp. Br. p. 29). We make no such concession or assumption.

As respondent's discussion of this point is not responsive to the corresponding argument presented in the brief for petitioner, and advances no tangible legal ground or authority in opposition to that argument, we leave the matter there so far as this reply brief is concerned.

POINT IIC.

Respondent's argument on this point is very largely a paraphrase and elaboration of the opinion of the Insular Supreme Court, reiterating the same contentions already met and disposed of in the original brief for petitioner.

However, there is something new in the attack launched by opposing counsel upon our suggestion that the original plan of the Puerto Rican Legislature in Act No. 99 to take the office of city manager very largely out of partisan politics, is obvious. They state that no evidence of such a plan is discernable from the face of the statute, and that none is pointed out in our brief (Resp. Br. p. 34).

From our viewpoint such evidences are plainly visible throughout the act. Several such evidences appear in the various specific provisions in effect exempting executive officers and employees of the municipality from removal

prior to expiration of term except on notice and hearing for misconduct. For examples of these see sections 21, 22, 27 and 39 (Br. for Pet., App. A, pp. 43-46).

Another and very strong evidence of such a plan is disclosed in the legislative history of section 21 of the act in question (Br. for Pet., App. E, p. 61), showing that as originally introduced that section expressly referred to a mayor and provided for his election at the polls every four years; and that the Legislature deleted that provision, so clearly subjecting the chief executive of the city to the direct influence of partisan politics, and substituted the present text, with other changes in the bill, providing for a city manager form of government, with the city manager holding his office "during good conduct."

Indeed the very choice and adoption by the Legislature of the city manager type of municipal government furnishes the plainest evidence of the intention of that body to remove the executive branch of that government from direct partisan political influences and interference, for it is a matter of fairly common knowledge that one of the great advantages claimed by its proponents for that form of municipal government, particularly where the city manager is invested with a life tenure subject to removal only for cause, is that it frees the essential municipal services from the direct impacts and disturbances of political reverses and upheavals.

Counsel for respondent assert that petitioner was in error in the statement in his opposition to the Board's motion for stay of execution that Mr. Geigel served as city manager without reappointment until after the expiration of his term according to respondent's four-year theory (R. 20), and by certified copy of the proceedings of the Board on February 10, 1941 (Resp. Br., App. B, pp. 58-60), they show that Mr. Geigel was reappointed on that date. As we have no reason to question the correctness of these representations, we acknowledge and apologize for the error, and withdraw the corresponding reference in our original brief (Br. for Pet. p. 34).

POINT IID.

As to this point, after carefully considering what has been said by our opponents under the corresponding caption in respondent's brief, we adhere to the views expressed in the original brief for petitioner.

The statement in respondent's brief (p. 51) that the question raised by petitioner under this caption has been decided against him by this Court in *Boynton* v. *Ball*, 121 U. S. 457, is erroneous. The holding in that case was to the effect that a discharge in bankruptcy may be set up in a state court to stay the execution of a judgment recovered against the bankrupt after the commencement of the proceedings in bankruptcy and before the discharge, even though the defendant did not before the judgment ask for stay of the proceedings under R. S. 5106. The distinction between that case and this one is obvious and vital. The stay of execution in that case was to be ordered by the trial court, and was in effect authorized and directed by this Court as mandatory under the facts and the bankruptcy statutes there involved. No such situation appears in the case at bar.

It is suggested by opposing counsel that the judgment of reinstatement became inoperative upon the expiration (according to their assumption) of petitioner's term of office (Resp. Br., p. 51), and they cite as supporting that theory *Gordon* v. *State* (1877), 47 Tex. 208, in which the Texas Supreme Court dismissed, for want of jurisdiction, an appeal taken by Gordon from a judgment removing him from the office of sheriff for official misconduct and neglect of duty, and then pointed out incidentally that the term of office of the former sheriff had long since expired and that a decision (on the merits) would therefore be useless and inoperative. There is nothing in the report of that case to indicate that it involved any controversy as to the length of the tenure of the office, such as constitutes the main issue here.

Our able opponents also invite attention to the so-called inherent power of courts to stay proceedings forever, and cite as referring to such a power, *American Surety Co.* v. *Fishback* (1917), 95 Wash. 124, 163 P. 488, and *Lineham* v. *McNeill* (1916), 31 D. L. R. 768 (Resp. Br., p. 51). The Washington case relates to a proceeding to stay execution under a local statute expressly authorizing such stays under prescribed conditions, and the decision therefore manifestly has no proper application in this case. And similarly the Canadian citation appears likewise inapposite here.

CONCLUSION.

For the reasons indicated in the prior brief for petitioner, and herein, the judgments of each and both of the lower appellate courts should be reversed, and the original judgment of the Insular Supreme Court directing reinstatement of the petitioner in the office of city manager of San Juan should be reaffirmed.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
FRED W. LLEWELLYN,
GABRIEL DE LA HABA,
Attorneys for Petitioner.

HUGH R. FRANCIS,
RIGBY, LEON & WEILL,
Of counsel.

APPENDIX 1.

ISLAND OF PUERTO RICO,
CITY OF SAN JUAN, *ss:*

LUIS A. CASTRO duly sworn according to law deposes and says:

That he is of legal age, married, an attorney at law and resident of San Juan Puerto Rico.

That from September 11th 1931 to October 14th 1941, he was the Secretary of the Government of the Capital of Puerto Rico or City of San Juan, and as such had the custody of all records of the City Government.

That by Resolution No. 243, approved September 16th 1936 the Board of Commissioners of San Juan granted a leave of absence to the City Manager Hon. Jesús Benítez Castaño of 150 working days with pay which leave of absence terminated on March 19th 1937.

That by virtue of said leave of absence Hon. Bolivar Pagán who was at the time Treasurer of the Capital became City Manager according to the provisions of Section 24 of the Act of May 15, 1931, Number 99, and also as provided in the aforesaid Resolution No. 243.

That Hon. Bolivar Pagán acted as City Manager until January 4th 1937 on which date he appointed Carlos M. de Castro as Director of Health and Charities, granted a leave of absence to himself as Treasurer in order to attend to his Legislative duties as Senator in the Senate of Puerto Rico, and also granted a leave of absence to Hon. Jorge V. Dávila as Director of Public Works of the Government of the Capital of Puerto Rico, whereupon the Hon. Carlos M. de Castro automatically became Acting City Manager of the Capital of Puerto Rico by virtue of the provisions of section 24 of the aforementioned Act.

That Hon. Carlos M. de Castro took over his duties as Acting City Manager, Acting Treasurer and Acting Director of Public Works of the Capital of Puerto Rico and discharged the duties of said offices until March 19th 1937, on which date the leave of absence of Hon. Jesús Benítez Castaño expired, and on this date, pursuant to call of the Governor of Puerto Rico the Board of Commissioners of San Juan met at a special session for the sole purpose of appointing a permanent City Manager, and by virtue of Resolution No. 271, dated March 19th 1937 did appoint the

Hon. Carlos M. de Castro as City Manager of the Capital of Puerto Rico, or, City of San Juan, Puerto Rico.

That the Hon. Carlos M. de Castro discharged the duties of his office as City Manager of the Capital of Puerto Rico from March 19th 1937 up to and including January 5th 1939 on which date he was suspended from office without pay by a Resolution of the Board of Commissioners of San Juan, Puerto Rico.

That as Secretary of the Capital of Puerto Rico I was present at all the meetings of said Board and was also the Secretary of the Administrative Board of the Capital of Puerto Rico and was present at all its meetings.

That the above is the truth and nothing but the truth.

At San Juan, Puerto Rico, this 18th day of April 1944.

LUIS A. CASTRO.

Affidavit No. 3655 Duplicate.

Sworn and subscribed to before me by Luis A. Castro, of legal age married, attorney at law and resident of San Juan, Puerto Rico known personally to me to be the person making the above declaration under oath. At San Juan, Puerto Rico this 18th of April 1944.

RAFAEL BARAGAÑO DIEZ,
Notary Public

(Seal)

Permanent Commission.

APPENDIX 2.

I, RAFAEL CABRERA TORRES, AUDITOR OF THE CAPITAL OF PUERTO RICO CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE THE FOLLOWING APPEARS:

1. That Mr. Jesús Benitez Castaño in his capacity of City Manager was paid his salaries as such, from the date he presented his resignation, on September 16, 1936 until the date when the same became effective, March 18, 1937, by virtue of the expiration of the leave of absence granted to him by the Board of Commissioners of the Capital.

2. That during the time that Dr. Carlos M. de Castro in his capacity as Director of Health and Charity discharged the office of Acting City Manager by reason of the leave granted to Mr. Jesús Benítez Castaño and until the expiration of the same leave of the said Mr. Benítez Castaño, Dr. de Castro did not receive any salary from the Government of the Capital as City Manager thereof.

3. That Dr. Carlos M. de Castro only received salary as City Manager of the Capital from the date when he took possession of that office, March 19, 1937 until the date when he was suspended from office and pay by the Board of Commissioners of San Juan on January 5, 1939.

GIVEN IN SAN JUAN PUERTO RICO ON THIS 18th day of APRIL 1944 AND AT THE REQUEST OF DR. CARLOS M. DE CASTRO.

(SIGNED) R. CABRERA TORRES
AUDITOR OF THE CAPITAL

I, Luis A. Castro, Public Translator, do hereby certify: That the foregoing is a true and correct translation of the original in Spanish.

San Juan, Puerto Rico, April 18, 1944.

LUIS A. CASTRO
Public Translator

APPENDIX 3.

GOBIERNO DE LA CAPITAL

OFICINA DEL SECRETARIO DE LA CAPITAL
SAN JUAN, PUERTO RICO

LINO PADRON RIVERA
Secretario de la Capital

RESOLUTION No. 271

TO APPOINT DR. CARLOS M. DE CASTRO CITY MANAGER OF SAN JUAN AND FOR OTHER PURPOSES

WHEREAS, under date of yesterday the leave of absence granted by the Board of Commissioners to the former City

Manager of the Capital, Hon. Jesús Benítez Castaño, expired and by the terms of said Resolution the resignation presented by him to take effect at the expiration of the said leave of absence became effective;

WHEREAS, it is proper for the Board of Commissioners to appoint a City Manager instead of the outgoing City Manager.

THEREFORE, be it resolved by the Board of Commissioners:

Section 1: To appoint, as it hereby does appoint, Dr. Carlos M. de Castro, City Manager of the Capital.

Section 2: That this appointment be notified to Dr. Carlos M. de Castro, the Governor of Puerto Rico, Hon. Blanton Winship and to all the authorities for proper legal purposes.

Section 3: All Ordinances, Resolutions or Acts in conflict herewith are hereby repealed.

Section 4: This Resolution, being of an urgent character, as it is hereby declared to be, shall become effective immediately at its approval.

I, Luis A. Castro, a Public Translator, do hereby certify: That the foregoing is a true and correct translation of the original in Spanish.

San Juan, P. R., April 18, 1944.

LUIS A. CASTRO,
Public Translator.

(SEAL)

I, Dr. Alberto Hernández, Acting Secretary of the Capital, do hereby certify:

That the preceding is a translation of the original Resolution No. 271, in Spanish, which appears in the official journal of the Board of Commissioners of San Juan and which appears to have been approved by the said Board of Commissioners of San Juan at special meeting held in the City of San Juan Puerto Rico, on the nineteenth day of March 1937 and after request of Dr. Carlos M. de Castro I issue the present certificate under my hand and the official seal of the Capital of San Juan on this 18th day of April, 1944.

DR. ALBERTO HERNÁNDEZ,
Acting Secretary.

(Seal)

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FILED
MAY 8 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner,*

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent.*

PETITIONER'S MEMORANDUM IN REPLY TO THE QUESTION OF MR. ASSOCIATE JUSTICE FRANKFURTER AT THE ORAL ARGUMENT MONDAY, APRIL 24, 1944.

Mr. Justice Frankfurter's question appears in the appended copy of the Court Reporter's Transcript (3 pages) of the colloquy between court and counsel on that subject during the argument.

Status of the jurisdictional authority of the Federal Court over the outlying domain, including Alaska, Hawaii, etc., to see as to which there is appeal and as to which the mode of review is expressly by certiorari as in the Philippines.

1. PUERTO RICO: Appeals lie to the Circuit Court of Appeals, from the United States District Court for Puerto

Rico in all cases; and from the Supreme Court of Puerto Rico in all cases, civil or criminal, wherein the constitution or a statute or treaty of the United States or any authority exercised thereunder is involved, and in all other civil cases wherein the value in controversy, exclusive of interest and costs, exceeds $5,000; and in all habeas corpus proceedings. (Jud. Code, Sec. 128-(a)—"Second" and "Fourth"). Puerto Rican appeals go to the First Circuit (*ibid.* Sec. 128-(d); 28 U. S. C. A. Sec. 225, Cumulative Annual Pocket Part, For use during 1943).

2. HAWAII: Substantially the same as Puerto Rico; except that Hawaiian appeals go to the Ninth Circuit. Jud. Code, Sec. 128-(a)—"Second" and "Fourth", and "(d)".

3. ALASKA: Appeals lie to the Circuit Court of Appeals for the Ninth Circuit, from the District Court for the District of Alaska or any division thereof, in all cases. Jud. Code, Sec. 128-(a)—"Third", and "(d)."

4. VIRGIN ISLANDS: To the Third Circuit, from the District Court of the Virgin Islands, in all cases. Jud. Code, Sec. 128-(a)—"Third", and "(d)".

5. CANAL ZONE: To the Fifth Circuit, from the United States District Court for the District of the Canal Zone "in the cases and modes prescribed in sections 61 and 62, title 7, Canal Zone Code (48 Stat. 1122)."[1] Jud. Code, Sec. 128-(a)—"Third", and "(d)".

6. CHINA: To the Ninth Circuit, from the United States Court for China, in all cases. Jud. Code, Sec. 128-(a)—"Fifth", and "(d)".

7. INTERLOCUTORY ORDERS: The appropriate Circuit Courts of Appeals respectively likewise have jurisdiction to review interlocutory orders or decrees of the district courts, "including the District Courts of Alaska, Hawaii,

[1] "Canal Zone Code, 1934", Secs. 61 and 62, title 7.

Virgin Islands and Canal Zone" (Jud. Code Sec. 128-(b)—"First", and Sec. 129).[2]

8. RESORT TO THE SUPREME COURT: *Puerto Rico; Hawaii; Alaska; Virgin Islands; Canal Zone; and United States Court for China;* From all of the foregoing jurisdictions, resort to this Court is only upon petition for certiorari, under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925,—addressed to the judicial discretion of this Court; or else upon certificate of a circuit court of appeals under Section 239, certifying questions or propositions of law upon which instructions are desired by that court for the proper decision of the cause.

9. PHILIPPINE ISLANDS:

(A)—Section 7 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 940, provides:

> "That in any case in the Supreme Court of the Philippine Islands, wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000, or wherein the title or possession of real estate exceeding in value the sum of $25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought

[2] Section 128-(b)—"First" of the Judicial Code, as amended by Section 1 of the Act of April 11, 1938, c. 354, 45 Stat. 422, *omits the United States District Court for Puerto Rico*, for some reason which does not appear from the Committee Report or Committee Hearings or from the debates on the floor of either House or Senate. The Act of February 13, 1925, had made this clause "First" of paragraph "(b)" read, all-inclusively (43 Stat. 936);

> "First. To review the interlocutory orders or decrees of the district courts which are specified in section 129";

and the specification in Section 129 deals only with the kinds of orders or proceedings to which it relates.

before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review."

(B)—The Philippine Independence Act of March 24, 1934, provides (Sec. 7-(6); c. 84, 48 Stat. 456, 460, 462):

"Sec. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

• • •

"(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands."

(C)—Section 5 of the Act of Congress of August 24, 1937 (c. 754, 50 Stat. 751, 753), in defining the term "court of the United States", entirely omits the courts of the Philippine Islands [as well as those for the Canal Zone, and the United States District Court for China]. The Section reads:

"Sec. 5. As used in this Act, the term 'court of the United States' means the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States; the term 'district court of the United States' includes the District Court of the United States for the District of Columbia; the term 'circuit court of appeals' includes the United States Court of Appeals for the District of Columbia; the term 'circuit' includes the District of Columbia; the term 'senior circuit judge' includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term 'judge' includes justice."

(D)—Historically, the marked difference between the provisions for the appeals from the Territories and the

other outlying possessions of the United States, except the Philippine Islands, to the various circuit courts of appeals, on the one hand,—and, on the other hand, the provision for review of decisions of the Supreme Court of the Philippine Islands only upon certiorari from this Court,—(and with a much higher minimum monetary limit in those cases in which jurisdiction is dependent upon the amount of money involved),—is plainly the outgrowth of the different attitudes of the Congress, from the beginning, toward the Philippine Islands and toward the other Territories and outlying permanent accretions to the United States.

From the outset, the legislation of the Congress with relation to the Philippine Islands has indicated an absence of any fixed intention to treat those Islands as permanent accretions to the United States.

Some of the marked differences between the Legislation for those Islands and that for the Territories and other permanent possessions of the United States, in several different directions, indicating,—and being themselves clearly the outgrowth of,—this different attitude and policy of the Congress toward those Islands, is noted in the succeeding parts of this memorandum.

10. *Differences between the Legislation of the Congress for the Philippine Islands and that for the Territories and other permanent territorial possessions of the United States.*

(A)—(1)—The statutory laws of the United States not locally inapplicable run generally to Puerto Rico, by virtue of the provisions of Section 9 of the Organic Act for Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951, 954; *Domenech* v. *National City Bank*, 294 U. S. 199, 204, and foot-note 11; *People of Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 260, 264.)

(2) But directly to the contrary, the statutory laws of the United States do not run generally to the Philippine Islands.

(3) The policy of the Congress with relation to the Philippine Islands, has, from the beginning, differed sharply from that with relation to Puerto Rico; as well as from that with relation to Hawaii and the former Territories here in the mainland United States, which it was always understood were on their way to ultimate Statehood. From the beginning it has apparently been the policy of the Congress to prepare the Philippine Islands for ultimate independence from the United States; and its legislation with respect to them has differed accordingly from that with respect to Puerto Rico and the Territories. Accordingly, in harmony with that general policy of differentiating the status of the Philippine Islands, the original Organic Act for those Islands, the 'Foraker Act' of July 1, 1902, omitted the provision usually found in Territorial organic Acts extending to the Territory all the laws of the United States not locally inapplicable,—and which was incorporated in substance in the original Organic Act for Puerto Rico, as well as in the present Organic Act for that island. But in dealing with the Philippine Islands the Congress provided, directly to the contrary, in the first Organic Act, the Philippine 'Foraker Act' of July 1, 1902, c. 1369, Section 1, 32 Stat. 691, that Section 1891 of the Revised Statutes should *not* be in force in those Islands, and followed that up by providing in Section 5 of the next Organic Act, the "Jones Law", the so-called "Autonomy Act" of August 29, 1916 (c. 416, 39 Stat. 545, 547):

> "That the statutory laws of the United States hereinafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

(4) The Philippines, of course, like all other territories belonging to the United States, are subject to the plenary power of the Congress under Clause 2 of Section 3 of Article IV of the Constitution, to:

> "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States";

but the Constitution is self-executing in them only insofar as it protects the fundamental rights of free men. (*Balzac v. Porto Rico*, 258 U. S. 298, 305, 312-313, accepting as 'the settled law of the court' the doctrine of the separate concurring opinion of WHITE, J., in *Downes v. Bidwell*, 182 U. S. 244, 290-291.) With that limitation, the Congress may in its discretion adopt for any territory belonging to the United States such laws and 'Rules and Regulations' as it may deem fit; and may or may not, as it shall determine to be best from time to time, extend to any Territory the operation of any statute or law of the United States.

(B).—From the beginning of the government, the Congress has freely exercised this power.

The former Territories within the continental United States which have since been erected into States, were from the first generally understood to be destined for Statehood. Hence it early became the habit of the Congress to provide in their Organic Acts that all of the laws of the United States not locally inapplicable should be in force within the Territory; although, in the very beginning, it did not do so, but, instead, habitually inserted in each Organic Act a list of those of the Acts of Congress which should be in force within the particular Territory. Examples are Section 7 of the Act establishing the Territory of Orleans, now the State of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285; and Section 9 of the Organic Act for Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, 657; but in the Florida Act there was added, at the end of the list, a general clause,—*'and all other Public Laws of the United States, which are not repugnant to the provisions of this Act' (3 Stat. supra, at p. 658).* And in the Organic Act for Wisconsin it was broadly declared that 'the laws of the United States are hereby extended, over, and shall be in force, in said Territory, so far as the same, or any provisions thereof, may be applicable' (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15.) Such a general extension continued thereafter to be the habit, and was embodied in the

"Provisions Common to all the Territories" in Title XXIII of the Revised Statutes of 1873, as Section 1891, reading:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect, within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States."

That section was re-published without change in the 1878 edition of the Revised Statutes. Its effect was to incorporate all of the organized Territories into the Union. It was based upon the general understanding that all of the Territories were destined for Statehood; and it was in force at the outbreak of the Spanish American War; and when, by the treaty of peace at its conclusion, Puerto Rico and the Philippines were ceded to the United States; and when, at about the same time, Hawaii was annexed.

(C).—But, as above pointed out, in dealing with the new Territories thus acquired outside of the limits of the continental United States, the Congress from the outset made a sharp differentiation between the Philippine Islands on the one hand and the other newly acquired territories on the other hand, in relation to extending to them the laws of the United States, and in relation to the apparent purpose of the Congress concerning their ultimate destiny. To Hawaii it extended Section 1891 of the Revised Statutes in full force, thereby extending to that Territory not only the laws of Congress but also the Constitution in its full force, and thereby definitely 'incorporating' Hawaii into the Union. (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 4, 39 Stat. 141; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211, 220.)

And likewise as to Puerto Rico, while the Constitution in its full force was not extended to that island,—and Puerto Rico is, therefore, not 'incorporated' into the Union (*Balzac* v. *Porto Rico*, 258 U. S. 298, 305-314),—yet as

above pointed out, by the first Organic Act for that Island, the 'Foraker Act' of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, it was provided:

> "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws";

and afterward by the present Organic Act for that Island, the Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954, that provision was re-enacted and continued in force; and further by Section 5 of that Act (39 Stat. at p. 953), United States citizenship was extended to the citizens of Puerto Rico.

(D).—But as to the Philippine Islands, directly to the contrary, the Congress provided by the first Organic Act for those islands, as already pointed out (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691, 692), that:

> "The provisions of Section 1891 of the Revised Statutes, of 1878 *shall not apply* to the Philippine Islands" (*Italics supplied*);

and followed that up fourteen years later by the provisions of Section 5 in the next Organic Act, the "Autonomy Act" of August 29, 1916, hereinbefore quoted, expressly directing that the statutory laws of the United States enacted after that date "*shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act*"; and it never extended United States citizenship to the inhabitants of the Philippines.

11. It was manifestly because of this settled policy of the Congress making this differentiation between the Philippine Islands and the other Territories and possessions of the United States, that the differentiation was likewise made between them in relation to the review of decisions of their local courts of last resort; and that, while

appeals as of right are granted to circuit courts of appeals from the Supreme Courts of Puerto Rico and of the other Territories and territorial possessions, except the Philippine Islands; yet review of decisions of the Supreme Court of the Philippine Islands may be had only by certiorari in the judicial discretion of this Court.

Respectfully submitted,

Dated: April 28, 1944.

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APPENDIX.

MR. JUSTICE FRANKFURTER'S QUESTIONS AT THE ORAL ARGUMENT, APRIL 24, 1944.

Mr. Associate Justice Frankfurter: Is either the Circuit Court of Appeals or are we, here, to take a wholly independent view? Is it your proposition that this Court in a matter coming from the Puerto Rico Supreme Court should take a wholly independent view?

Colonel Rigby: I think so.

Mr. Associate Justice Frankfurter: What do you mean by that? Just paraphrase that: what you think our function is in reviewing a judgment of the Puerto Rico Supreme Court dealing with Puerto Rico legislation.

Colonel Rigby: I have tried to say here in our brief at * * * page 15 * * *

* * * * * * * * * *

Mr. Associate Justice Frankfurter: Have you included in your brief the present state of the jurisdictional authority of the Federal Courts over the outlying domain, including Alaska, Hawaii, etcetera to see as to which there is appeal and as to which the mode of review is expressly by *certiorari* as in the Philippines?

Colonel Rigby: No, I have not.

Mr. Associate Justice Frankfurter: Do you happen to know why Congress cut off review of the acts of the Supreme Court of the Phillippines except by *certiorari* and it did leave appeal from the Supreme Court of Puerto Rico?

Colonel Rigby: The answer to that, is it not, is that from the beginning legislation the Congress has taken a different course for the Philippines than for Puerto Rico? In the very beginning, the Senate, at the time of the approval of the Treaty with Spain—

Mr. Associate Justice Frankfurter (interposing) Not on this point, as far as I recall.

Colonel Rigby: What is that?

Mr. Associate Justice Frankfurter: Not on this point. As to both the Philippines and Puerto Rico, appeal may come direct to this Court from the Supreme Court of those two Islands or the Archipelago and the Island until it was cut off in the case of Puerto Rico to the First Circuit in 1913?

Colonel Rigby: My thought is—the only thing I know is that that goes to the general difference in the course of legislation between the way Congress has considered the Philippines and Puerto Rico * * *

Mr. Associate Justice Frankfurter: A good many cases come here or did come here, as a matter of right, in 1925, and the Puerto Rico cases were shunted off from this Court to the First Circuit in 1913, I think.

Colonel Rigby: To the First Circuit; I think at about that time.

Mr. Associate Justice Frankfurter: What I want to know is why, when 1925 came along, that was done; and whether there is any light on the subject that Congress did not assimilate the mode of review of the Islands' Supreme Court to that of Puerto Rico.

Colonel Rigby: I should be glad to make inquiry into that and include it in a memorandum which I may file here.

Mr. Associate Justice Frankfurter: Also: what light there is in reference to the other outlying domains, whether this was a survival without thought that no one got around to, or was by some design as to the relation of the review over the Puerto Rico Supreme Court so differently dealt with than in the case of the Philippines.

Colonel Rigby: I will be glad to. Of course Hawaii and Puerto Rico are dealt with in the same way.

Mr. Associate Justice Frankfurter: And the Virgin Islands and the Panama Canal: they were distributed among the various circuits.

Colonel Rigby: I will be glad indeed to put a memorandum on file.

I think, for the moment, that that is all I have to say.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENT.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN,

Respondent.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, TO REVIEW JUDGMENT AFFIRMING JUDGMENT OF SUPREME COURT OF PUERTO RICO STAYING EXECUTION OF LATTER COURT'S PRIOR JUDGMENT DIRECTING REINSTATEMENT OF PETITIONER AS CITY MANAGER.

BRIEF FOR RESPONDENT.

Opinions Below.

The official report of the opinion of the United States Circuit Court of Appeals, First Circuit, to which the present writ is directed, is volume 136, Federal Reporter, second series, pages 419, 426.

The official report of the opinion of the Supreme Court of Puerto Rico which was affirmed by the Circuit Court

of Appeals will be found, in Spanish, in volume 59, *Decisiones de Puerto Rico*, pages 676, 686. The English text of this opinion will be found in the record herein, pages 36, 46.

The opinion of the District Court of San Juan, which was reversed by the Supreme Court of Puerto Rico in its first decision in this litigation, is not officially reported, but may be found in the Record filed in this Court in *Board of Commissioners* v. *De Castro*, No. 94, October Term, 1941, pages 38, 45.

The first decision of the Supreme Court of Puerto Rico in this controversy, rendered June 28, 1940, directing petitioner's reinstatement, will be found in volume 57 Puerto Rico Reports, pages 149 to 159, and also in the Record filed herein, pages 1 to 11. The opinion of the United States Circuit Court of Appeals, First Circuit, affirming the judgment last above mentioned, is officially reported in volume 116 Federal Reporter, second series, page 806. A petition for writ of certiorari filed by the Board of Commissioners in this Court for review of the judgment of the Circuit Court of Appeals was denied October 13, 1941, 314 U. S. 614.

Jurisdiction.

This Court has jurisdiction by virtue of Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. 347).

Statement of the Case.

The facts of this case, as stated by Petitioner in his brief are substantially correct, except in one important particular which we shall note hereafter. In addition, the Statement does not recite certain facts which, in Respondent's opinion, should be considered and weighed.

Board Resolution No. 373, decreeing the removal of petitioner from office, contained findings of fact convict-

ing Petitioner of "dereliction, inexcusable negligence and immoral and improper conduct in the discharge of the duties of his office" [1]. Upon certiorari proceedings, instituted by Petitioner before the District Court of San Juan, said resolution was upheld, the court stating that the evidence was conflicting on these issues and that, under a long line of decisions of the Supreme Court of Puerto Rico, the courts should not disturb findings of fact made by the Board if there was substantial evidence supporting them (F. R. 44, 45).

Upon appeal, taken by Petitioner to the Supreme Court of Puerto Rico, the judgment of the District Court was reversed (R. 1-11), Board Resolution No. 373 was annulled,[2] and the reinstatement of Petitioner in his office of City Manager was ordered.

The Board appealed to the United States Circuit Court of Appeals, First Circuit. The appeal was dismissed, or, rather, summarily affirmed by the Circuit Court of Appeals, on motion of De Castro, before any briefs had been filed by either party. It is perhaps appropriate at this point to observe that Petitioner herein availed himself and took advantage of Rule 39 (b) of the Circuit Court of Appeals in order to ask for and obtain a summary disposition of the Board's appeal at that time. Petitioner's attitude in this Court, urging the invalidity of said Rule 39 (b) and assailing it as a misunderstanding of this Court's decisions, is, to say the least, striking.

In its first opinion,[3] as also in its further opinion to which the present writ is directed, the Circuit Court of

[1] F R 8.

[2] In this first decision, the Insular Supreme Court held that the City Manager might be removed for *grave* negligence, but felt bound also to hold that the evidence of such grave negligence ought to be somewhat similar to that required for a crime, felony, or a misdemeanor. (R 10).

[3] Per Curiam.

Appeals concluded that the Insular Supreme Court was not inescapably wrong in its construction of the local statutes involved. It also stated that, "without necessarily approving all the language in the opinion of the Supreme Court"[4], that court was not patently erroneous in its conclusion of law.

Rehearing of this judgment having been denied, the Board filed in this Court its petition for writ of certiorari. This Court denied the petition on October 13, 1941.[5] Thereby, all opportunities for review of the Insular Supreme Court's judgment reversing the Board's action were destroyed. The chief executive officer of the largest city in Puerto Rico who had been condemned by his fellow citizens as derelict, inexcusably negligent, and guilty of immoral and improper conduct, was ordered back into the office of City Manager of San Juan.

Fortunately, by that time the term of office of petitioner had already expired. General elections had been held in Puerto Rico on November, 1940, and a new City Administration had been elected. Therefore, immediately after receipt of the mandate by the Supreme Court of Puerto Rico, the Board of Commissioners filed in that Court its petition for stay of execution of the judgment in so far as said judgment ordered the reinstatement of Petitioner in the office of City Manager. A hearing was set by the Supreme Court of Puerto Rico on the matter presented,[6] both parties were fully heard, orally and in writing,[7] and finally the Court issued its order directing that execution of its prior judgment be stayed in so far as the reinstatement in office was concerned, on the ground that Petitioner's term of office had expired on February, 1941. (R. 46).

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[4] Ibid.

[5] 314 U. S. 614, 86 L. Ed. 495.

[6] R 37.

[7] R 19, 25.

Contrary to Petitioner's assertion, to the effect that the Insular Supreme Court treated the issue thus presented "as a new one of mixed law and fact",[8] Respondent submits that the issue then presented to the Supreme Court of Puerto Rico was treated as a pure question of law exclusively, as a question of interpretation and construction of a statute, and, therefore, not subject, in its consideration and decision, to the introduction of evidence.

Petitioner filed a motion for reconsideration which was denied by the Supreme Court of Puerto Rico (R. 47, 66), and then an appeal was taken by him to the Circuit Court of Appeals. After a hearing on the merits, the Circuit Court of Appeals rendered its opinion and judgment affirming that of the Supreme Court of Puerto Rico on the ground that, even though if free to take an independent view of the point at issue, the Circuit Court would be inclined to disagree with the construction placed on the Act by the Supreme Court of Puerto Rico, said Circuit Court was not prepared to say and hold that the judgment appealed from was inescapably wrong.[9] It also indicated that the case involves "a political matter of strictly local concern in San Juan, Puerto Rico" [10].

Petitioner sought reconsideration of this judgment, and, upon denial thereof, filed his petition for writ of certiorari (R. 94).

At pages 4 and 5 of its Brief, Petitioner makes a statement of facts which is wholly inaccurate and most prejudicial to Respondent. Petitioner states that the Board of Commissioners, in its Brief in the Puerto Rican Supreme Court, "not only did not advocate its present theory of a four-year term, but actually took an exactly contrary view,

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[8] Brief for Petitioner, page 5.

[9] *De Castro* v. *Board of Commissioners of San Juan*, 136 F. 2d. 419, at page 425 (7).

[10] Ibid.

expressly construing Section 21 of Act No. 99 precisely as it has been construed by the present Petitioner throughout this proceeding, to the effect that the office of City Manager is one for life pending good behavior, and not one for any fixed term (R. 50) * * *"[11]

The true fact is that such contention was made by De Castro himself in *his* brief in the Puerto Rican Supreme Court. The very reference to the record which Petitioner makes will readily show the real situation:—at page 50 of the Record appears "Contention Number 1" of De Castro's motion for reconsideration, filed in the Insular Supreme Court. In the last paragraph of said page 50, De Castro refers to "the brief filed *by appellant*" and quotes from said Brief certain portions wherein it was argued that the City Manager's term of office was for life and not for a fixed number of years. It is obvious that the brief referred to is the one which had been filed by the party who appealed from the District Court of San Juan to the Insular Supreme Court, "by appellant". Inasmuch as said district court had entered judgment for the Board and against De Castro, it is clear that "appellant's brief" was not the Board's brief.[11a]

The Board has never advocated the life-tenure theory, simply because such theory does not correspond to the statute, nor to the generally understood meaning thereof, nor to the intention of the Puerto Rican Legislature.

A further point need be noted in Petitioner's Statement Of The Case. It is argued that Respondent herein did not make any mention whatever of its present contention in the Circuit Court of Appeals or in this Court, in the occasion of filing the prior petition for certiorari (No. 94, Oc-

[11] Last four lines of Page 4 and first three lines of Page 5, Brief for Petitioner.

[11a] See also pertinent paragraph in the opinion of the court below, at page 81 of the Record herein.

tober Term, 1941). The reason is obvious. The first stage of this litigation involved only the validity of Board Resolution No. 373, adjudging Petitioner guilty of immoral and improper conduct, dereliction and inexcusable negligence in the discharge of his duties. The issue as to whether Petitioner's term of office was four years or whether his tenure was for life was wholly immaterial and irrelevant to the controversy then being settled. No error could have been assigned or predicated before either the Circuit Court of Appeals or this Court, on either theory. Petitioner's rights under the first judgment of the Puerto Rican Supreme Court were not affected at all by the prevalence of either contention. As Petitioner correctly states in another part of his Brief,[12] "the length of the term of office was not in dispute in the trial court" and, consequently, could not have been in dispute in the Insular Supreme Court on appeal.

ARGUMENT.

Summary.

I. The Circuit Court of Appeals obviously has not construed the rule established by this Court in its decision in *Sancho Bonet* v. *Texas Co.*, 308 U. S. 463, 471, so as to bar reversal of the Puerto Rican Supreme Court in any matter of local law where the judgment of that Court, although regarded as erroneous, can be supported on any theory whatever, no matter how strained and illogical. The Circuit Court of Appeals has correctly appraised the extent, scope and effect of said rule, refusing to reverse the Puerto Rican Supreme Court in matters of local law where the judgments of that Court are supported by reason or logic, or, although the Circuit Court may disagree in principle, where said judgments cannot be held inescapably wrong or patently erroneous. See Point I., *infra*, page 9.

[12] Brief for Petitioner, page 34.

II. The judgment of the Circuit Court of Appeals represents but another fair and just application of the "local law doctrine" of this Court and, therefore, should be affirmed by this Court, because the judgment of the Insular Supreme Court is really not only not patently erroneous, nor inescapably wrong, but actually is the only true interpretation of the intent of the Puerto Rican Legislature as reflected in a local statute.

A. Section 21 of Act 99, when taken in connection with the context of the whole statute, is not altogether clear and free from ambiguity. Nevertheless, if it were considered unambiguous, resort to extrinsic aids for its interpretation is not only permissible but altogether desirable and proper. See Point II. A, *infra*, page 16.

B. The Insular Supreme Court did not err in passing upon the question of the term of office of Petitioner, under Act 99, nor in failing to remand the case to the Court of first instance for the taking of evidence in relation to such statutory interpretation, because, the question being one of pure law, and the judgment of reinstatement having been entered by said Insular Supreme Court, upon receipt of the mandate from the Circuit Court of Appeals after the Board's appeal thereto had been summarily dismissed, the Puerto Rican Supreme Court reacquired jurisdiction in the premises and could, in furtherance of justice, stay, either temporarily or permanently, the execution of its judgment if valid reason therefor was shown to exist. See Point II. B, *infra*, page 28.

C. The Puerto Rican Supreme Court was not inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered. Its ultimate conclusion that Section 21 of Act 99, correctly interpreted in relation to the context of the whole statute and by the light of the extrinsic aids available, represents truly and

legitimately the real and actual intention of the lawmaker is correct. Any other conclusion in this respect would lead to absurd consequences and to unreasonable results, plainly at variance with the policy of the legislation as a whole. See Point II. C, *infra*, page 31.

D. The judgment of January 14, 1942 implies a permanent stay of execution. Whether it results in an amendment of the prior judgment is immaterial in the premises. Petitioner's term of office as City Manager having expired after the judgment of reinstatement was entered and during the pendency of appeal proceedings, it "would be contrary to the statute and to justice that, availing himself of the terms of the judgment, Petitioner should be reinstated in an office to which he has no right." (R. 39). The Puerto Rican Supreme Court had jurisdiction to so act. Indeed, the authority of courts to stay execution has been referred to as an inherent one. See Point II. D, *infra*, page 49.

Point I.

The incidental statement of the Circuit Court of Appeals to the effect that its appellate jurisdiction in this class of cases is pretty much of a dead letter, if erroneous, does not require reversal of the judgment of that Court. Reversible error must be predicated upon substantial departure from law or upon prejudicial action manifestly unwarranted on the record. The judgment of the Circuit Court of Appeals is correct. It is the necessary consequence of a fair and just application of the doctrine of this Court with reference to the judicial policy of deferring to the local procedure and tribunals of Puerto Rico.

Consistently since the year 1874 this Court has manifested its general unwillingness to overrule the local tribunals upon matters of purely local concern [13] In different

[13] A fair collection of the various cases will be found in Appendix F, pages 63-79, Brief for Petitioner.

words, with varying expressions, at times forcefully, on occasion emphatically, and lately in the form of a clear imperative, this Court has reiterated the doctrine. It is a rule of policy, looking towards orderly development of the Government of Puerto Rico as an integral part of our governmental system. A reversal of the judgment of the Supreme Court of Puerto Rico on a matter of local law is justifiable only in the face of "manifest error" [14], or when said judgment is shown to be "clearly wrong" [15] or upon "an unescapable conclusion that it is wrong" [16], or when this Court is constrained to depart from the principles by which it follows and sustains the local law as applied by the court below due to "a sense of clear error committed" [17], or when the interpretation of the local tribunal is "manifestly erroneous" [18].

The recent decisions on this point are forceful and emphatic, even poignant. The test applied in the first of the two Sancho Bonet cases [19] makes reversal justifiable only when the judgments of the Puerto Rican courts are "unsupported by logic or reason". The second Bonet case elucidated the doctrine definitely. This Court said:

> "We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed

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[14] *Fox* v. *Haarstick*, 156 U. S. 674, 678-679; *Santa Fe County* v. *New Mexico, ex rel.* Coler, 215 U. S. 296, 305, 307; *Treat* v. *Grand Canyon R. Co.*, 222 U. S. 448, 452.

[15] *Santa Fe Central Ry. Co.* v. *Friday*, 232 U. S. 694, 700.

[16] *Diaz* v. *González*, 261 U. S. 102, 105-106.

[17] *Villanueva* v. *Villanueva*, 239 U. S. 253, 298-299; *Matos* v. *Alonso Hermanos*, 309 U. S. 429, 432.

[18] *Waialua Co.* v. *Christian*, 305 U. S. 91, 109.

[19] *Sancho Bonet, Treasurer*, v. *Tabucoa Sugar Co.*, 306 U. S. 505, 506-511, and *Sancho Bonet, Treasurer*, v. *Texas Co.*, 308 U. S. 463, 470-472.

with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."[20]

In due justice to the Circuit Court of Appeals, respondent asserts, contrary to petitioner's contention, that no misunderstanding of this Court's decisions in the above cases appears from the Record herein. In the instant case the Circuit Court simply heeded the "repeated admonitions" of this Court[21]. Rule 39 (b) of that Court is no more than a reiteration of the doctrine of said cases. The rule was adopted in the interest of litigants. Under it, as a matter of practice, the transcripts of records brought on appeal from the Supreme Court of Puerto Rico are not printed until the Circuit Court, upon examination of the statement on appeal and of the typewritten record, determines *prima facie* that the appeal is meritorious. Thereby, unnecessary expense and needless delay are avoided and litigation is considerably expedited.

The second *Bonet* case is an appropriate illustration of the benefits flowing from the rule of this Court as embodied in Rule 39 (b) of the Circuit Court of Appeals. Two tenable constructions of the statute involved in the latter *Bonet* case were found by this Court, one accepted by the Supreme Court of Puerto Rico, and the other expressed, upon reversal, by the Circuit Court of Appeals. Although the conclusion reached by the Circuit Court of Appeals was

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[20] *Sancho Bonet, Treasurer, v. Texas Co.*, ibid, pages 470-471.

[21] *Sancho Bonet, Treasurer, v. Texas Co., supra.*

held by this Court to be "wholly reasonable", its judgment was reversed on the ground that such fact did not warrant holding the conclusion of the Supreme Court of Puerto Rico to be inescapably wrong. Expressed differently, it is not sufficient that the Circuit Court of Appeals may disagree with the judgment of the Puerto Rican Supreme Court, nor that the Puerto Rican Supreme Court may have chosen the less reasonable interpretation, nor that the construction made by the Circuit Court of Appeals is the most reasonable one. Such test is not novel at all. It was actually insinuated in the *Grand Canyon* case[22] and in the *Waialua* case[23].

The first *Bonet* case[24] had already indicated or hinted at such test, couched in different language but in reality grounded on the same underlying theory, when this Court stated therein that judgments of the Puerto Rican courts should not be disturbed if "not unsupported by logic or reason".

Petitioner asserts that an examination of the decisions shows that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court[25]. Respondent submits that this Court has repeatedly refused to make such an examination. The present litigation is a good instance or example.[26] Another recent and striking illustration will be found in the case of *De La Torre* v. *National City Bank of New York*, 110 F. 2d 976, 983, wherein the Circuit Court of Appeals, after an extensive and elaborate opinion, construing a local Puerto Rican statute, concluded that "If we were

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[22] *Treat* v. *Grand Canyon Ry. Co., supra.*

[23] *Waialua* v. *Christian, supra.*

[24] *Sancho Bonet, Treasurer,* v. *Yabucoa Sugar Co., supra.*

[25] Brief for Petitioner, page 15 E.

[26] Petition for certiorari filed by the Board of Commissioners in this Court was denied, 314 U. S. 614.

to take a wholly independent view of the question at issue * * *"[27], it would have reversed the Supreme Court of Puerto Rico, but that, under the circumstances, "it would require a touch of arrogance * * *"[28] for the Circuit Court to say that the judgment there appealed from was inescapably wrong, and, therefore, entered judgment of affirmance, incidentally stating that

> "* * * though Congress has given us appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the value in controversy exceeds $5,000, the exercise of this jurisdiction is so restricted by the canon prescribed by the Supreme Court of the United States that appeals in such cases are likely to be futile and merely to cause needless delay and expense."[29]

The similarity between both the holdings and the language used by the Circuit Court of Appeals in the *De La Torre* case and in the instant case is striking. Yet this Court denied certiorari in the *De La Torre* case.[30]

The very fact, however, that this Court has not fully examined every case coming to it within its statutory jurisdiction from a Territorial court demonstrates only applications of the rule with reference to interpretations of local statutes by local tribunals. Of course, that rule does not compel, nor require, nor insinuate abdication by the Circuit Courts of Appeals of their statutory jurisdiction to review judgments of the Territorial courts, but certainly, and wisely, exacts subordination of the Circuit Courts' opinions, when construction of local Territorial statutes is involved, to the opinions of the Territorial courts, even in those instances where the Circuit Courts disagree with the Terri-

[27] 136 F. (2d) at p. 983.

[28] Ib. at page 983.

[29] Ib., page 988.

[30] 311 U. S. 666, 85 L. Ed. 428.

torial courts, indeed even in such cases where the Circuit Courts' interpretations might seem, on appeal, to be equally plausible with those of the Territorial courts, nay even though they might seem the most reasonable ones. Only when the Territorial court's opinion is necessarily, ineludibly, inescapably wrong is a reversal justified, both in law and in reason.

Therefore, irrespective of what the Circuit Court of Appeals may have thought or said as to the effectiveness or lack thereof of its appellate jurisdiction over judgments of the Puerto Rican Supreme Court on matters of local law, what is really at issue in this Court is the result arrived at by the Circuit Court. Hence, Respondent takes issue with Petitioner's assertion [31] to the effect that the court below, in its opinion in the present case, definitely determines and expresses its opinion that the Insular Supreme Court was wrong in its interpretation with reference to the tenure of office of the City Manager of San Juan. The Circuit Court merely states that, if it were free to take a wholly independent view of the point at issue, it "would be inclined to conclude" [32] differently from what the Puerto Rican Supreme Court held. Significantly enough, however, the Circuit Court further said:

> "We are not prepared to say that the judgment now under review is "inescapably wrong"." [33]

It thus held virtually that the judgment of the Insular Supreme Court is not wholly "unsupported by reason or logic"; [34] that, if it were free to take an independent view of the matter, it would be inclined to make a different construction of the statute; that it "merely disagreed with that

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[31] Brief for Petitioner, page 16, last paragraph.

[32] Opinion below, 136 F. 2d 419, at page 425 (6).

[33] Ib., page 425 (7).

[34] *Sancho Bonet, Treasurer,* v. *Yabucoa Sugar Co., supra.*

interpretation";[35] that, *on appeal,* it believed that the Puerto Rican tribunal chose the less reasonable of two possible interpretations; and that it felt that its own interpretation was the most reasonable one.

It will thus be appreciated that Petitioner's contention is based on a fragile factual premise, i. e., that the Circuit Court of Appeals definitely decided that clear, manifest, inescapable error had been committed by the Puerto Rican Supreme Court. This, it is obvious from the Record, the Circuit Court of Appeals did not determine or hold. Indeed, it stated, contrariwise, that it was not prepared to hold that the judgment of the Supreme Court of Puerto Rico was inescapably wrong.

It follows that instead of misunderstanding this Court's decisions, the Circuit Court of Appeals fully grasped their scope and effect and gave them due application, in obedience to their injunction.

Respondent shall not discuss Petitioner's contentions, marked J and K, at pages 18 and 19 of the Brief, for the obvious reason that the point therein made is immaterial to the decision in the instant case. In other words, whether or not the rule of this Court with reference to the weight properly attributable to the decisions of local courts on matters of local concern is applicable both to decisions of the Supreme Court of Puerto Rico and of the United States District Court for Puerto Rico, or only to the Puerto Rican Supreme Court, is an issue not here present, the determination of which would produce no practical effects herein.

Summarizing, respondent contends, under this first assignment of error, as follows:

1. The Circuit Court of Appeals did not affirmatively hold that the judgment of the Puerto Rican Supreme Court is manifestly erroneous. The Circuit Court merely stated

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[35] *Sancho Bonet, Treasurer,* v. *Texas Co., supra.*

that if it were free to take a wholly independent view of the point at issue it "would be inclined" to construe the local statute in a manner different from that arrived at by the Insular Supreme Court.

2. The Circuit Court of Appeals plainly and significantly stated that it could not decide, that it was not prepared to say, that the judgment of the Puerto Rican Supreme Court is inescapably wrong.

3. The judgment of the Insular Supreme Court is not wholly unsupported by reason or logic. It certainly is not patently absurd or inescapably erroneous. On the contrary, it is the only correct, just and fair determination, interpretation and application of the intention of the Puerto Rican Legislature in this respect. See Points II. A and II. C, *infra*, pages 16 and 31.

4. Therefore, the judgment of the Circuit Court of Appeals, affirming that of the Puerto Rican Supreme Court, is a precise and true application of the real doctrine of this Court with reference to the respect to be paid to the judgments of local tribunals on matters of local law.

> "The practical construction of local laws is, perhaps, the best evidence of the intention of the lawmakers. The courts of the United States adopt as a rule of decision the established construction of local laws. And it cannot be material, whether such construction has been established by long usage or a judicial decision."
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> *Carrol* v. *Safford*, 44 U. S. 441, 3 How. 441, 11 L. Ed. 671 (1845).

POINT II. A.

The Puerto Rican Supreme Court's resort to extrinsic aids for construction of Section 21 of Act No. 99, with relation to the term or tenure of office of the City Manager of San Juan, does not constitute error, in

view of the fact that said section, when construed with reference to the context of the whole statute or associated sections thereof, is not wholly clear or free from ambiguity. Nevertheless, even if it were considered unambiguous, such resort to extrinsic aids is not only permissible but altogether desirable, proper and commendable.

The object of all interpretation of statutes is to ascertain the intention of the lawmakers and to make it effective. The basic principle has repeatedly been announced that if the statute is plain, certain and free from ambiguity, interpretation is unnecessary. Like all rules, however, this is not an absolute canon of construction. Various factors may, and in numerous cases do, require and justify interpretation. Besides the doubt created by the doubtful meaning of words and phrases, there are indeed other instances where the terms used do not express the legislative intent perfectly, in which interpretation is needed, as,—to take one readily available instance—,where the language used exceeds or falls short of expressing the meaning intended.

At best, words are inexact tools.[36] Abstractly, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Abstractly, the thought expressed in a detached sentence or paragraph may have little or no resemblance to the idea actually intended.

"Each word, phrase, clause and sentence are the elements from which the legislative intent is formed. The various words, phrases, clauses, and sentences make up the framework which supports the legislative

[36] Cf. *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 481, 87 L. Ed. 407, 411, citing *U. S.* v. *American Trucking Associations*, 310 U. S. 534, 543, 544, 84 L. Ed. 1345, 1350, 1351, 60 S. Ct. 1059.

intent. They are mutually dependent. Co-operatively, they convey the utlimate idea."

Crawford The Construction of Statutes, 1940, page 260.

Since words are not always used accurately by the legislator, the thought conveyed by the statute in its entirety may reveal the inaccurate use. From a very early date,[37] this Court has consistently recognized this fact.

"It is true that the natural import of words may be affected by the context, and that where other parts of the statute demonstrate an intent different from that which the words of a particular section of themselves would import, such manifest intent may be admitted to give to the words employed a less obvious meaning."[38]

Oneale v. *Thornton*, 10 U. S. 53, 6 Cranch. 53; 3 L. Ed. 150.
(per Chief Justice Marshall).

Petitioner contends that the phrase "and shall hold office during good conduct", contained in Section 21 of the Act, is so clear and free from ambiguity that the Puerto Rican Supreme Court "was manifestly and inescapably wrong"[39] in resorting to extrinsic aids for its construction.

At the outset, we must bear in mind Justice Storey's early advertence:

"Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature."

Wilkinson v. Leland, 27 U. S. 627, 2 Pet. 627, 7 L. Ed. 542 (1829).

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[37] 1810.

[38] "In expounding a statute", this Court later said, "the court must not be guided by a single sentence or member of a sentence, but must look to the provisions of the whole law and to its object and policy". *United States* v. *Boisdore Heirs*, 49 U. S. 113, 8 How.; 12 L. Ed. 1009. And see *Pollard* v. *Bailey*, 87 U. S. 520, 20 Wall. 520, 22 L. Ed. 376, and *Costanzo* v. *Tillinghast*, 287 U. S. 341, 77 L. Ed. 350.

[39] Brief for Petitioner, page 24.

A particular term (in the instant case "during good conduct") cannot prevail over the expression of the legislative intent, if apparent throughout the context of the statute, although such particular term may have a well-defined meaning. In the present case, as will hereafter be shown,[40] the various related provisions of the Act disclose a clear expression of legislative will contrary to Petitioner's construction of Section 21.

Petitioner's time-worn and dogmatic contention, advanced in an attempt to condemn consideration of aids to construction upon the ground that the statute is "too clear and free from ambiguity," has been long ago authoritatively discarded.

> "It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if it exists." [41]
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> Boston Sand & G. Co. v. United States, 49 S. Ct. 52, 278 U. S. 41; 73 L. Ed. 170 (1928).
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> (per Justice Holmes.)

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[40] See Point II. C, *infra*, page 31.

[41] Notice similar language in subsequent decisions:—"The respondent contends that the words of Sec. 402 are plain and unambiguous and that other aids to construction may not be utilized. It is sufficient answer to deny that such words when used in an appropriation bill are words of art or have a settled meaning. See United States v. Perry, 50 F. 743, 748 (C. C. A. 8th). The very legislative materials which respondent would exclude refute his assumption. It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words." *United States* v. *Dickerson*, 60 S. Ct. 1034, 310 U. S. 554, 84 L. Ed. 1356. Even when the plain meaning of the words does not produce absurd results but merely an unreasonable one plainly at variance with the policy of the statute, this Court has followed that purpose, rather than the literal words. *United States* v. *American Trucking Associations, supra.* "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no rule of law which forbids its use, however clear the words may appear on superficial examination." *United States* v. *American Trucking Associations, supra.* And see generally Pound, Enforcement of Law, 20 Green Bag, 401, 404, referring to the "literal school" of interpretation.

That the phrase here in question, "during good conduct," is not wholly clear and free from ambiguity is demonstrated by the very fact that it needs interpretation in order to make it equivalent in effect to the meaning sought for by Petitioner, e. g., "during life." In his Brief, Petitioner, referring to said phrase, says:

> "It obviously means simply what it says, that is, "during good conduct", or *in other words*, for life * * *"[42]

These are certainly *other* words. At any rate, the statutory phrase *per se* does not necessarily express the idea of life tenure. It needs to be interpreted and construed in order to arrive at such equivalent.

The interpretation which Petitioner so assumingly makes is structured on three points:

(a) an analogy with a constitutional precept.[43]

(b) a reference to judicial precedents.[44]

(c) an intrinsic aid, that is, a comparison with Sec. 9 of the Act, relative to the term of office prescribed for the Board of Commissioners.

Point (a) is in itself an extrinsic aid to construction.[45]

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[42] Brief for Petitioner, page 8, A. Italics supplied.

[43] Section 1, Article III., of the Federal Constitution.

[44] *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 308; *Ex Parte* Hennen, 38 U. S. (13 Pet.) 225, 258-259; and *Smith* v. *Bryan*, 110 Va. 199, 203, 40 S. E. 652, 653.

[45] The meaning of statutes is ascertained in various ways, in the following order or sequence: (1) the words of the statute (in the instante case, the words *per se* do not necessarily express life tenure, such as would, for instance, the words "and shall hold office during his life"; (2) an examination of the context and the subject matter and purpose of the enactment (intrinsic aids); and (3) consultation with the several extrinsic matters for assistance (extrinsic aids). Further help may, of course, be found in the use of the numerous rules of construction. See Crawford, op. cit. pages 273, 274, sec. 172. Reference to other statutes or constitutions is manifestly an extrinsic aid. Crawford op. cit. sec. 237 at page 448.

Resorting himself thus to extrinsic aids, Petitioner implicitly recognizes the necessity, desirability, and convenience of resort to extrinsic aids for interpretation of Section 21 of the Act. Thereby, Petitioner tacitly admits also the fact that the statute is not wholly clear and free from ambiguity. Independently of the effect of such admissions of ambiguity, the reference made by Petitioner to other laws or to the Constitution, for purposes of construction, is proper and pertinent "only when doubt still remains after that source (*the words of the statute*) has been exhausted".[46]

Point (b) implies another resort to extrinsic aids, that is, a reference to judicial precedents. Blind reliance upon precedents will not necessarily assure the discovery of the legislative intent.[47] And, of course, if Petitioner's contention is to meet success, under the rule of *Bonet* v. *Texas Co.* and prior decisions, reliance on precedents in this case would have to *necessarily* assure the discovery of the legislative intent.

In this connection, the apposite inquiry would be: Why attach to the phrase "during good conduct," as used by the Puerto Rican Legislature in Act No. 99, the same meaning as given to it by this Court in the Hennen or in the Martin cases? Why thus assume that the Puerto Rican lawmakers, in 1931,[48] were cognizant of such meaning and intended so to use the phrase, a hundred years later? And why make such assumption notwithstanding the very significant fact that the first appointed City Manager, Mister Benítez Castaño, who was instrumental in the drafting of the statute, contemporaneously with the approval thereof expressed his

[46] Crawford, op. cit. sec. 237, page 448.

[47] Freund, Interpretation of Statutes (1916), 65 Pa. L. Rev. 207.

[48] Act No. 99 was approved May 15, 1931. Laws Puerto Rico, 1931, page 656.

understanding that his term of office was limited in point of time and would end on the Tuesday following the first Monday of 1937,[49] that is, precisely on the same day when the first elective Board of Commissioners, as prescribed by the Act,[50] would enter into possession of their offices and would elect a new City Manager?

The construction of the constitutional phrase "during good behavior" (*conduct ?*), made in the Martin and Hennen cases, certainly cannot be held to be of obligatory force upon the 1931 Puerto Rican lawmakers to such an extent as to justify the assertion that *necessarily* their use of a similar phrase *per force* signifies an intention to create a life tenure for the City Manager of San Juan, notwithstanding contrary indications thereto in the context of the statute, and in the face of resulting absurd consequences and anti-democratic and embarrassing effects flowing from such construction. See Point II. C, *infra*, page 31.

It is a mistake to treat statutory constructions like other branches of the common law, as a body of doctrine to be gathered from particular precedents and judicial utterances.[51]

Precedents may show us the way other courts have solved the problem, and may even make it possible for us to avoid the error into which others may have fallen, but blind adherence to precedents will tie the courts to the past. Considering the interpretative process as a whole, and keeping in mind that the primary purpose of construction is to

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[49] See Brief for Petitioner, Appendix B, page 48, letter of Mr. Benítez Castaño to the Board of Commissioners of San Juan, dated September 11, 1936.

[50] Section 50.

[51] Freund, op. cit. Cf. Dissenting Opinion of Justice Brandeis in *Olmstead* v. *United States*, 277 U. S. 438, 48 S. Ct. 464, 72 L. Ed. 944, 66 A. L. R. 376.

ascertain the legislative intent and to make it effective, there can be no real objection to allowing the Puerto Rican Supreme Court sufficient discretion to select that construction which will, in its opinion, enriched with the background of its peculiar knowledge of local action and conditions, meet the equities of the controversy and interpret most faithfully the intention of the Puerto Rican Legislature.[52]

Point (c) involves a reference to intrinsic aids for construction of the statute. The quest for the meaning of Section 21 of the Act transcends beyond the words of the statute to search their significance in comparison with a related section thereof. The context is thus used for purposes of interpretation, a quite appropriate method,[53] but which presupposes the existence of ambiguity in the precept which is being construed.[54]

The foregoing analysis of the three points upon which Petitioner supports his own construction of the statute shows that resort to extrinsic aids is absolutely necessary. It hardly behooves Petitioner, therefore, to assign as reversible error the action of the Puerto Rican Supreme Court in resorting to such aids for the construction of the statute here involved. Incidentally, the fact may be noted that modern authority on the subject emphatically commends and urges the use of extrinsic aids irrespective of the presence or absence of ambiguity in the statute to be interpreted and applied.[55]

Assuming, therefore, *argumentandis causa*, that Section 21 is absolutely clear and unambiguous, still, before its

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[52] Crawford, op. cit. Sec. 176, page 286.

[53] Black, Interpretation of Laws (second edition), page 242.

[54] *Dyre* v. *Dyre*, 212 N. C. 620, 194 S. E. 278.

[55] Crawford, op. cit. 281, 282, 283, 284, sec. 175.

meaning is ascertained, it must be subjected to interpretation and construction.

> "Few words are so plain that the context or the occasion is without capacity to enlarge or narrow their extension."
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> *Surqce* v. *Danna*, 248 N. Y. 18, 161 N. E. 315.

> "All new laws, though penned with the greatest of technical skill and passed upon the fullest and most mature deliberation, are considered as more or less obscure and equivocal until their meaning be fixed and ascertained by a series of particular discussions and adjudications."
>
> Dwarris (Potter) Statutes, 49.

The legislative intent should not be defeated simply because the statute may seem clear and unambiguous upon its face, when the court can, by resorting to the recognized sources of assistance and by applying any of the existing rules of construction, actually ascertain the true legislative intent. This court, for instance, has given to the word "banks" an interpretation and application considerably narrower than the ones it usually has, notwithstanding the fact that the word is one of settled meaning.[56]

The phrase "during good conduct" has no definite, well-settled meaning. It certainly cannot be classified as a term of art or of science. And, as a matter of fact, it has not, in all cases, been construed as implying or being equivalent to life tenure.[57]

Finally, a further point must be cleared. Both the Cir-

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[56] *Lionberger* v. *Rouse*, 76 U. S. 468, 9 Wall. 468, 19 L. Ed. 721 (1870). And see *Larkin* v. *Paugh*, 48 S. Ct. 366, 72 L. Ed. 640 (1928) where this Court interpreted and applied the term "public lands" differently from its usual and generally known meaning, stating *inter alia*: "The question usually is one of intention, considering the nature and object of the particular statute."

[57] *Stewart* v. *Ellsworth*, 75 Atl. 59. Cf. *Robertson* v. *Coughlin, Mayor, et al.*, 82 N. E. 678.

cuit Court of Appeals and Petitioner argue that, since the Act, as originally approved, prescribed no four-year term for any majority of the Commissioners to be appointed to serve during the five years prior to the inauguration of those elected in 1936, there was no four-year term to which the term of the City Manager could have been related as to that of a majority of the members of the appointing authority.[58] In this connection, the Circuit Court of Appeals states[59] that there is no basis for saying that the first City Manager held a four-year term, for at that time (1931) the tenure of office of the Commissioners themselves was not four years.

Both the court below and Petitioner have overlooked the scheme of the statute in setting up what might be called a provisional, appointive government for San Juan, designed and intended to remain in power only until the 1936 general elections, and subsequent quadrennial elections, should afford the opportunity to all qualified electors of choosing new administrations. Consequently, Section 50 of the original Act[60] provided that the Commissioners appointed by the Governor in accordance with Section 9 of the original Act "shall hold office until the first Monday in January of 1937," and also that the Board of Commissioners should be elected by popular vote at the general elections to be held in 1936 and every four years thereafter. It is clear, therefore, that the first Board of Commissioners was appointed, by direction of law, to exist only until the general elections of 1936. Hence, its appointment of City Manager could not overlap such date (1936), for, as prescribed by Section 21 of the Act, the City Manager "shall be appointed by the Board of Commissioners created by this Act," and "the Board of Commissioners

[58] Brief for Petitioner, page 23.

[59] 136 F. 2d at page 422.

[60] Brief for Petitioner, Appendix A, page 46.

created by this Act" was to be elected by popular vote in 1936 and every four years thereafter.

The first City Manager, appointed by the first provisional Board of Commissioners, understood, as did everybody else, that his term of office would expire on the same day as the new Board of Commissioners to be elected by popular vote in 1936 would take possession of their offices.[61] The appointment of the first City Manager could not overlap the expiration of the term of the first Board of Commissioners simply because each Board newly elected every four years is entitled by law [62] to choose a new City Manager. It cannot fairly or logically be assumed or understood that the first City Manager, chosen by an appointive, transitory Board, would be entitled to hold his office after new Boards *elected* by the people took possession of their offices and began functioning. Endless complications and undue embarrassment in the governmental structure and machinery are easily foreseeable as a result of such assumed situation. It is not lightly to be assumed that the Legislature, although allowing certain political or economical ideas to prevail in the polls, through the election of the legislative and administrative entity of government, should contemplate and fail to avoid a quite certain conflict between a City Manager, holding his office for life, and successive Boards of Commissioners which might have different political and economic ideas. Section 21 provides that the Board shall appoint the City Manager. It does not forbid the appointment of one of the commissioners to the post of City Manager. Assuming the life tenure contention, the first appointive, transitory Board of Commissioners might conceivably have bound for a lifetime all successive *elective* Boards to govern with a City Manager possibly violently hostile to the economic

[61] See footnote 49, *supra*.

[62] Section 21 in connection with Section 50 of Act No. 99.

program, social ideas or political views of said successive Boards.

Sound construction of the statute, particularly bearing in mind the manifest policy of the legislation, quite clearly reveals that the lawmakers' intention was to install a provisional governmental machinery in San Juan whose term of office would expire when a new administration should be elected in 1936. Hence, the expression in Section 50 of the Act.

This Court has recently held that where the plain meaning of words used in a statute produces an unreasonable result, plainly at variance with the policy of the legislation as a whole, the court will follow the purpose of the statute rather than the literal words.[63]

In the instant case, the policy of the legislation as a whole manifestly cannot be held to be to take away from the citizens of San Juan, the largest municipality of the Island of Puerto Rico, the right to elect every four years, if indirectly, the City Manager as well as the rest of the City Officials. It should take a very clear legislative expression to justify such a deprivation of one of the most cherished rights of a democracy, as well as to justify such a radical departure from a practice legislatively established in Puerto Rico ever since the American Government acquired by treaty the Island.[64]

Petitioner states, as a corroborating fact for his life tenure construction, that the first City Manager, Mr. Benítez Castaño, served in office until early in 1937. This fact, as we have already seen, instead of lending support to such construction, rather runs counter thereto in view of Mr. Castaño's contemporaneous expression of his opinion that

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[63] *United States* v. *Rosenblum Truck Lines*, 62 S. Ct. 445, 315 U. S. 50, 86 L. Ed. 671 (1942).

[64] In all municipalities of the Island the Mayor, as well as municipal councils or assemblies, are elected by the qualified voters thereof.

his term of office would expire "*the* Tuesday following the first Monday of 1937 (in the case 4th. of January, 1937)".[65] It is well to bear in mind that such substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute. *Helvering* v. *Griffiths*, 318 U. S. 371, 411, 87 L. Ed. 843, 868 (Headnote 5).

Respondent submits that no error was committed by the Puerto Rican Supreme Court in resorting to extrinsic aids for interpretation of Section 21 of the Act, and that in view of the context of the whole statute, of the general understanding of the times, of the opinions of the men who actually were active in the drafting of the statute, and of the steady and consistent interpretation placed on the statute by all persons concerned, as well as by the failure of the Insular Legislature at subsequent meetings to amend said statute, the tenure provided for the City Manager's office was four years.

POINT II. B.

The Puerto Rican Supreme Court did not commit error in undertaking to construe Section 21 of Act No. 99, such issue being peculiarly within its jurisdiction. Remand of the case to the trial court for such purpose would have been unnecessary, dilatory and futile, inasmuch as courts do not receive evidence for purposes of interpretation of statutes. In any event, Petitioner was fully heard by the Puerto Rican Supreme Court, both orally and in writing, and had the opportunity to, and did submit, evidence on the matter.

The statutory jurisdiction of the Supreme Court of

[65] Brief for Petitioner, Appendix B, page 48.

Puerto Rico is extensive. In its deliberations and decisions said Court is not confined to the errors as pointed out by the parties, "but in furtherance of justice, the Court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right *and to prevent injustice and delay*".[66]

For the purposes of this assignment of error, it must necessarily be assumed that the City Manager's term of office is that of four years.[67] That being the case, when upon denial of the Board's petition for certiorari in this Court the mandate was received at the Supreme Court of Puerto Rico, Petitioner's term of office as City Manager had already expired.[68] Irrespective, therefore, of whether he was lawfully discharged, Petitioner had then no right to be reinstated in an office to which he would not have been entitled in 1942 in any event, had charges not been preferred at all.

Under these circumstances and especially bearing in mind the important fact that the judgment of reinstatement in favor of Petitioner had been entered by the Puerto Rican Supreme Court and not by the trial court, the petition of the Board of Commissioners for stay of execution of the judgment in so far as it directed reinstatement was appropriately submitted to the Puerto Rican Supreme Court which took cognizance thereof and then entertained it "so as to promote justice and right and to prevent injustice and delay".

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[66] Section 1 of the Act of the Puerto Rican Legislature, approved March 12, 1903 (Laws of Puerto Rico, 1903, page 59). Italics supplied.

[67] Otherwise the error assigned would be one of substantive, rather than of adjective law, and would, Respondent assumes, have been included under the first error assigned.

[68] Petitioner was appointed by the Board in its inaugural meeting after the 1936 elections, that is, on January 4, 1937. (F. R. 1, 30).

The question thus presented was certainly in the record, in the sense that the date of the appointment of Petitioner appeared in said record. The rest was a matter strictly of law.

It should be here noticed that Petitioner himself did not allege before the Puerto Rican Supreme Court "any legal ground to uphold his contention that this Court (*the Insular Supreme Court*) lacks jurisdiction to pass upon and decide this controversy".[69] It should also be noted that Petitioner did not request the Puerto Rican Supreme Court to remand the case to the trial court for dilucidation of the matter presented. This assignment of error, consequently, presents a question not previously submitted to either the Circuit Court of Appeals or the Insular Supreme Court.

Petitioner was not deprived of a full hearing in this matter. The judgment of the court below was entered after a hearing[70] whereof Petitioner was duly notified and wherein he appeared and was afforded full opportunity to present his contentions. As a matter of fact, Petitioner submitted exhibits (R. 34, 35) and filed extensive written objections, after the oral argument was completed (R. 19, 34).

No interest, public or private, would have benefited by a remand to the District Court of San Juan for determination of the law issue presented. In the interpretation and construction of statutes, courts pass upon purely law questions, even though they take judicial notice of some circumstances outside of the act which go to show its meaning, and even though in doing so they frequently take a wide range of illustration and investigation from public records, public documents, general and local history, and other matters of such general and public notoriety as may be supposed to

[69] R. 38.

[70] R. 37.

have been in the minds of all the legislators when the act was passed.[71]

POINT II. C.

The Puerto Rican Supreme Court was not inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered. Its ultimate conclusion that Section 21 of Act 99, correctly interpreted in relation to the context of the whole statute and by the light of the extrinsic aids available, represents truly and legitimately the real and actual intention of the lawmaker is correct. Any other conclusion in this respect would lead to absurd consequences and to unreasonable results, plainly at variance with the policy of the legislation as a whole.

(1) The Shurtleff Case

Both the Circuit Court of Appeals and Petitioner have misunderstood the position of the Puerto Rican Supreme Court and its purpose in citing *Shurtleff* v. *United States*, 189 U. S. 311, 23 S. Ct. 535, 47 L. ed. 828. As to the court below, it is but appropriate that notice be taken of the fact that, in discussing the Shurtleff Case and its citation by the Insular Supreme Court, it started along the correct path. The Circuit Court said, in this connection:

> "Life tenure for public officers is the exception. Hence, should not be read into the statute by implication but only if the intention of the Legislature to that effect appears to be so evident as to permit of no doubt. *This is an accepted canon of construction, for which the court properly cites Shurtleff* v. *United States*, 1903, 189 U. S. 311, 23 S. Ct. 535, 47 L. ed. 828."[72].

[71] *Badeau* v. *United States*, 21 Ct. Cl. (U. S.) 48. See also Crawford, op. cit. page 408, sec. 225.

[72] 136 F. 2d 419 at page 423, (1). Italics supplied.

This is precisely the correct appreciation of the motives of the citation made by the Puerto Rican Supreme Court. But the court below and Petitioner go one step further and insist that the Shurtleff Case was cited by the Insular Supreme Court as authority "for holding that Section 21 of Act No. 99 is ambiguous, or for reading into that section an implied intent on the part of the Legislature to prescribe any term of years for the office of City Manager"[73].

A careful reading of the opinion of the Supreme Court of Puerto Rico (especially at pages 40 and 41 of the Record) will show that the Shurtleff Case was cited exclusively to support the proposition that life tenure is the exception and that the tenure of an office shall not be understood to be for life unless the intention of the legislature to that effect appears to be so evident as to permit of no doubt. Therefore, the comments of both Petitioner and the Circuit Court of Appeals are not quite fair to the Puerto Rican tribunal.

(2) Anomalies Resulting From a Life Tenure Construction.

The court below recognizes the anomalies pointed out by the Puerto Rican Supreme Court as necessarily resulting from an interpretation of the statute in the sense that the City Manager is appointed to hold his office for life. The absurd or unreasonable consequences of such construction are, among others, the following:

(a) The Treasurer, the Director of Public Works, the Director of Health and Charities, the School Director and the Secretary of the Capital are all appointed by the City Manager[74]. Since the Act does not provide for definite terms of office for these officials, the City Manager might

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[73] Brief for Petitioner, page 28.

[74] Section 26 of the Act.

conceivably appoint them either for an indefinite number of years, or during the life of the City Manager, or for a limited term of years to be fixed by the City Manager. Section 39 of the Act, however, provides that all employees shall be appointed for the term for which each officer is appointed. Therefore, the officials above enumerated might be appointed for a term of four years, while the employees appointed by the City Manager would hold their employments during the life of the City Manager. Certainly, it is not lightly to be assumed that the legislator intended to establish "such an absurd difference between the tenure of office of an employee and that of officers as important as those enumerated in Section 26"[75] of the Act.

With reference to this unreasonable situation flowing from a life tenure construction for the office of City Manager, the court below simply points out that such an anomaly is relevant only if it is assumed that there is doubt or ambiguity as to the meaning of Section 21. The court below, thus, applies in a most drastic and blind manner the "literal school" of interpretation, instead of the modern doctrine which looks more to the purpose and policy of the legislation, sacrificing if necessary the literal meaning of words[76]. Petitioner, challenging the correctness of the hypothesis, admits that the sections of the Act dealing with the appointment and tenures of the various municipal officers and employees other than the City Manager "are not entirely clear"[77]. And, passing the point, asserts that

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[75] R. 42.

[76] *Ozawa* v. *United States*, 43 S. Ct. 65, 260 U. S. 178, 67 L. Ed. 199 (1922); *United States* v. *Katz*, 46 S. Ct. 513, 271 U. S. 354, 70 L. Ed. 986 (1926); *Haggard Co.* v. *Helvering*, 60 S. Ct. 337, 308 U. S. 389, 84 L. Ed. 340 (1940); *United States* v. *American Trucking Associations*, *supra*; *United States* v. *Dickerson*, *supra*; *Helvering* v. *Hammel*, 61 S. Ct. 368, 311 U. S. 504, 85 L. Ed. 303, 131 A.L.R. 1481 (1941); *United States* v. *Rosenblum Truck Lines*, *supra*.

[77] Brief for Petitioner, page 29.

that question is not properly at issue in this case. It argues, however, that such discriminations in terms of office are justified as part of the "obvious original plan" [78] of the Puerto Rican Legislature to take the office of City Manager, including "perhaps" the municipal employees appointed by that officer, out of partisan politics, adding that there are close parallels for such legislative plan in the civil service laws and regulations of the United States and many of our states and municipalities.

No evidence at all of such "obvious original plan" is discernible from the face of the statute and none is pointed out in Petitioner's brief as illustration. Such plan never really existed. Its existence is merely conjecture and speculation on the part of Petitioner.

In point of fact, there is evidence that such plan cannot possibly have been in the mind of the lawmakers. Section 18 of the Act [79] prescribes that the Board of Commissioners shall create such positions as may be necessary for the Government of the Capital, and shall provide the corresponding salaries in the budget, and no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties of such employee and stating the need of the position for the public service. In consonance with the provisions of this section, neither the City Manager nor the other officers appointed by him really have any power or faculty with reference to the appointment of employees. It is the Board of Commissioners who decides and determines the necessity of hiring employees, the salary to be paid to them and the powers and duties of such employees. The Board of Commissioners is elected by popular

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[78] Brief for Petitioner, page 30.

[79] Appendix A herein, page 53.

vote.[80] It is obvious, therefore, that partisan politics may, and as a matter of fact do, intervene in this matter. Besides, in Puerto Rico there is a civil service law in full force and effect, approved prior to the year 1931,[81] very similar to most of the civil service laws and regulations of the United States and of the various states and municipalities. The existence of this law, totally rewritten precisely in the year 1931, also tends to refute the contention that there may have been some kind of plan to take the office of City Manager, including the employees appointed by him, very largely out of partisan politics.

3. Another absurd or unreasonable consequence flowing from a life tenure construction for the office of City Manager is that an uncalled for discrimination would result between the employees appointed by the officials of the Government of San Juan and the employees appointed by the City Manager. The former would hold their employments during the tenure of the appointing officer, as prescribed in Section 39 of the Act, while the latter would hold their employments during the life or incumbency of the City Manager. This obvious consequence certainly cannot be held to have been contemplated by the legislator.

4. Administrative and Contemporaneous Construction of the Statute.

The Puerto Rican Supreme Court gave due weight to the fact, judicially noticed, that the political parties of Puerto

[80] Section 50 of the Act.

[81] An Act to Regulate and Improve the Civil Service of Porto Rico, approved March 14, 1907, Laws of Puerto Rico 1907, pages 171-184; amended by An Act To Create the Puerto Rico Civil Service Commission and Outline Its Duties And Functions; To Regulate And Improve the Civil Service of Puerto Rico; To Repeal the Civil Service Act Approved March 14, 1907, As Amended, And For Other Purposes, Laws of Puerto Rico, 1931, page 534.

Rico have always construed this statute in the sense that the tenure of office of the City Manager is that of four years, and that the Boards of Commissioners elected every four years have always appointed a new City Manager on their first inaugural session, that is, on the second Monday of February of the year following each general election.[82] The Insular Supreme Court also judicially noticed the persons who had been candidates of the different political parties to the office of City Manager in the last two general elections.[83] Petitioner himself was a candidate for that office in the elections held in 1936,[84] thereby tacitly agreeing with the generally understood conception of the statute as prescribing a limited term of office for the City Manager. The Puerto Rican Court also judicially noticed that Mr. Fernando Géigel was a candidate to the office of City Manager in the general elections held in 1940, and that the party to which Mr. Géigel belonged won said elections and, consequently, Mr. Géigel was appointed City Manager after the 1940 elections.

The Circuit Court of Appeals sweeps away the weight of this contemporaneous construction of the statute by public officials and by the people in general simply by saying that such interpretation would be a relevant consideration if the Act itself is deemed to be doubtful or ambiguous in meaning.[85] The court below thus insisted on a drastic literal interpretation of one section of the statute, paying no regard whatsoever to the context and to the purpose and policy of the Act as a whole.

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[82] Section 50 of the Act as amended by Act No. 10, Laws Puerto Rico (1937), page 131.

[83] 1936 and 1940.

[84] R. 44.

[85] 136 F. 2d 419 at page 425 (5).

Petitioner, however, at the outset questions the Puerto Rican Supreme Court's authority or faculty to take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction. Petitioner asserts that such a general rule is restricted in Puerto Rico by virtue of the provisions of Section 398 of the Puerto Rican Code of Civil Procedure, 1933 edition.[86]

The statute invoked by petitioner does not enjoin judicial notice of facts of common knowledge. The provision is manifestly directory and does not exclude the taking of judicial notice, upon a doubtful issue of statutory construction or upon any process of interpretation of laws, of public acts and facts generally known, of history of the times, etc. The statute simply has a compelling effect on courts when so requested by litigants, but not a prohibitive effect.

What everybody knows the courts are presumed to know, and of such matters may take judicial cognizance.[87] Judges are not necessarily ignorant in court of what everybody else, and they themselves out of court, are familiar with; and there is no reason why they should pretend to be more ignorant or unobserving than the rest of mankind.[88]

This Court has judicially noticed the election of delegates and the assembling of a political convention, as public matters.[89]. And the Puerto Rican Supreme Court has taken judicial notice of the following facts, none of which could properly be classified within any of the eight subdivisions

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[86] Section 398 is copied *verbatim* at pages 31-32 of the Brief for Petitioner.

[87] *Nev-Cal Electric Securities Co.* v. *Imperial Irrigation District*, C. C. A. Cal., 85 F. 2d 886, certiorari denied, 57 S. Ct. 493, 300 U. S. 662, 81 L. Ed. 871.

[88] Cf. *Affiliated Enterprises* v. *Waller* (Del.), 5 Atl. 2d 257, 261.

[89] *Mills* v. *Green*, 16 S. Ct. 132, 159 U. S. 651, 40 L. Ed. 293. And see *Wallace* v. *United States*, 42 S. Ct. 221, 257 U. S. 541, 66 L. Ed. 360.

of Article 398 of the Code of Civil Procedure of Puerto Rico:

(a) The difference between a letter sent by certified mail and a letter sent by special delivery. *Abril et al.* v. *Moreno*, 10 P. R. Rep. 484.

(b) The existence of regular mail service between two cities in Puerto Rico. *Carrera Hermanos* v. *New York & Porto Rico Steamship Co.*, 25 P. R. Rep. 781.

(c) The character as public highway of a road between two cities in Puerto Rico. *Principe* v. *American Railroad Co.*, 22 P. R. Rep. 282.

(d) The fact that a large part of the law in England and in many States of the Union is unwritten. *Barclay et al.* v. *McCormick*, 29 P. R. Rep. 836.

The construction of a statute is a matter for the courts and not for the jury. In construing the statute the court might, had it chosen to do so, have called to its aid the wisdom and experience of eminent counsel, but it was not bound to do so and its refusal is not erroneous.[90]

Petitioner complains that the Puerto Rican Supreme Court should also have taken judicial notice of the fact that the first City Manager, Mr. Benítez Castaño, resigned in September, 1936, during the electoral campaign of that year, "thus assuring a vacancy in the office early in the following year, and thus obviating any inference such as that drawn by the Court".[91] The fact has no importance

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[90] Gaylor's Appeal, 43 Conn. 82. Cf. State ex rel. *Coleman* v. *Kelley*, 71 Kansas 811, 81 P. 450, 70 L. R. A. 450; *Pacific Coast Steamship Co.* v. *United States*, 33 Ct. Cl. (U. S.) 36; *Brown* v. *Turner*, 174 Mass. 150, 54 N. E. 510; *Badeau* v. *United States*, *supra*; *Gardner* v. *The Collector* (U. S.), 6 Wall. 499, 511, 18 L. Ed. 890; *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 15 S. Ct. 673, 39 L. Ed. 759. See generally Crawford, op. cit. page 408, #225, and De Sloovere, Judge & Jury in Statutory Interpretation (1933), 46 Harvard Law Review 1086, 1103.

[91] Brief for Petitioner, pages 32-33.

or effect on the present controversy. Mr. Benítez Castaño, who was instrumental in the drafting of this statute, entered into office in the year 1931, when the Act went into effect, with the same understanding that every citizen had in the community at that time and throughout the subsequent years, that is, that the first City Manager would hold his office until the Tuesday following the First Monday of 1937, which was the date fixed by law.[92] Mr. Benítez Castaño did express in writing this general understanding.[93] And petitioner himself participated in this general understanding, since he was the candidate for City Manager of one of the political parties active in the 1936 electoral campaign.

Therefore, the resignation of Mr. Benítez Castaño in September, 1936 did not "assure a vacancy in the office" for the first time since 1931. In view of the contemporaneous construction of the statute, as made by Mr. Castaño and by all the parties concerned, in 1931 and thereafter, no resignation was necessary to assure the vacancy.

Petitioner also complains that the ruling of the Circuit Court of Appeals to the effect that Petitioner might have protected himself against the inferences drawn by the Puerto Rican Court from the facts judicially noticed, by challenging any such facts and by citing other facts so noticeable, is unsound because it deprives Petitioner of his right to a full hearing, since the facts offsetting those inferences "may have been" such as are not subject to judicial notice under Puerto Rican law. And he further alleges that, having had no opportunity to prove such facts, the Record does not disclose them, but that he alleged the existence of proof of such facts in his motion for reconsideration in the Insular tribunal.

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[92] Section 50 of the Act as originally enacted.

[93] Brief for Petitioner, Appendix B, page 48; also footnote 49, *supra*.

Respondent answers that a hearing was set by the Puerto Rican Supreme Court on this matter, that therein Petitioner submitted in writing his opposition, and that he accompanied thereto exhibits as evidence, and did not indicate nor point out what other proof he had which he could not procure or submit at the time. Whatever evidence Petitioner desired to offer, he had a full opportunity to offer and submit.

5. Petitioner himself originally was in agreement with the four-year construction of the tenure of office of the City Manager of San Juan.

The Puerto Rican Supreme Court also judicially noticed that Petitioner was a candidate, during the general elections of 1940, for membership in the Puerto Rican House of Representatives. These elections took place five months after the original judgment of reinstatement in favor of petitioner was entered.[94] The local tribunal, therefore, stated incidentally that such attitude of Petitioner tended to show his conviction "that he would not be able to continue holding the office of the City Manager of the Capital once the term of four years which would elapse on the second Monday of February, 1941, had expired".[95]

Petitioner asserts that the inference thus drawn by the local court is a complete *non sequitur*, explaining that his status as City Manager had been in suspense and involved in litigation for more than a year and that, therefore, he would have been right in estimating that it would continue so for several years, it being just as reasonable to infer that he intended, if elected to the Legislature, to abandon his claim to the City Managership. Further, Petitioner

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[94] Said original judgment was entered June 28, 1940 (R. 11), while the 1940 general elections were held on November, 1940.

[95] R., 45.

says that there are other possible explanations of that candidacy, as, for instance, that he may have supposed that he could legally serve as a legislator while his status of City Manager continued in suspense. No doubt there are other *possible* explanations for Petitioner's candidacy, but certainly there is no other more *probable* explanation or inference than that made by the Puerto Rican Supreme Court. And, to be sure, on the face of it no imputation of clear error or patent absurdity could be formulated against the inference made by the local tribunal.

Petitioner asserts, with reference to the appointment of Mr. Fernando Géigel as City Manager after the elections of 1940, that he alleged before the Puerto Rican Supreme Court that Mr. Géigel merely continued in office as City Manager, *without reappointment*, until his resignation long after January, 1941. The true fact, however, is that Mr. Géigel, who had succeeded Petitioner and who in the 1940 elections had been the candidate of the winning political party, for reappointment to the office of City Manager, did not continue in office without reappointment. In the inaugural session of the new Board of Commissioners elected during said elections, the Board formally appointed Mr. Géigel as City Manager of San Juan.[96]

But Petitioner further argues that in any event the candidacy of Mr. Géigel in 1940 lends no more support to the inference drawn by the Puerto Rican Court than does that of Petitioner himself in 1936, "for it must by that time have been generally known throughout the City that the whole matter was involved in litigation"[97]. In all certainty, such argument does not truly mean that in 1936 "the whole matter was involved in litigation", because plainly the litigation in the instant case started on September 21, 1939,[98]

[96] Appendix B of this Brief, page 58.

[97] Brief for Petitioner, p. 35.

[98] F R 1.

when De Castro filed his petition before the District Court of San Juan for review of the Board's resolution directing his removal from office. And if the argument attempts at persuasion on the basis that in 1940 "the whole matter was involved in litigation", it manifestly fails in its purpose in view of the fact that by that year the litigation involved only the issue as to the correctness of the removal, but not at all as to the length of the term of office of the City Manager. Neither in 1936 nor in 1940 was there yet any litigation at all as to the length of the term of office of the City Manager. Not until October 27, 1941 [99] was any issue raised as to the tenure of the office of City Manager of San Juan.

The fact, also adduced by Petitioner,[100] that Mr. Benítez Castaño, first City Manager, remained in office over five years has already been explained.[101] Such fact not only does not afford support to Petitioner's contention, but altogether sustains the limited term theory.

Petitioner repeats, as part of his argument under this assignment of error, the inexact and incorrect assertion that Respondent itself "argued in the earlier stages of this litigation that the term of office of the City Manager was for life".[102] We have already shown [103] that this is not true and that the Board of Commissioners never expressed or manifested such theory. In the nature of things, this would have been most improbable since it has been the consistent and generally accepted construction of the statute locally that the office of City Manager was intended by the statute to be limited to the same term as that of the appointing authority, the Board of Commissioners.

Finally, Petitioner argues that the Legislature of Puerto

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[99] R., 12.

[100] Brief for Petitioner, p. 35.

[101] Pages 24, 25, 26, 27, and 28 of this Brief, *supra*.

[102] Brief for Petitioner, p. 35.

[103] Pages 5 and 6 of this Brief, *supra*.

Rico, "not only did not construe Act No. 99 as providing a four-year term for the City Manager, but actually declined to insert such a provision in the law",[104] as indicated by the fact that, as originally introduced, Section 21 of the Bill subsequently enacted with amendments as Act No. 99 actually provided for a four-year term, but was amended before enactment by striking out that provision and substituting the present text. And Petitioner further argues that, as late as 1936 and 1937, the Insular Legislature was still of the same mind, as is shown by the fact that bills were introduced during those years to provide expressly for election of the City Manager of San Juan at the quadrennial general elections, and that each of those bills failed of enactment.

Respondent answers, in the first place, that the Legislature of Puerto Rico has in effect construed Act No. 99 as providing a four-year term for the City Manager, in view of the fact that, although contemporaneous construction did establish such limited term, and although at every quadrennial election held from 1936 on new Boards have appointed new City Managers, and although in 1942 the Puerto Rican Supreme Court ratified such contemporaneous and practical construction of the statute, the Insular Legislature has left the statute unchanged, notwithstanding the fact that it has repeatedly met in session during that period of time.

> "Where a particular interpretation has been placed on a statute by the court and the legislature at its subsequent meeting has left the statute materially unchanged, it is presumed that the legislature has acquiesced in that interpretation."
>
> 59 C. J. 1012.
>
> Cf. *Ashbrook* v. *Bailey*, 116 Va. 10, 81 S. E. 64, and *State* v. *Morgan*, 131 Wash. 145, 229 P. 309.

[104] Brief for Petitioner, p. 35.

"The failure of Congress to alter or amend the section, notwithstanding this consistent construction by the department charged with its enforcement, creates a presumption in favor of the administrative interpretation, to which we should give great weight even if we doubted the correctness of the ruling of the Department of Labor."

Costanzo v. *Tillinghast*, 53 S. Ct. 152, 287 U. S. 341, 77 L. Ed. 350.

The fact that Section 21 of the statute, as originally drafted, aimed to create the office of City Manager as an elective office with a term to coincide with the quadrennial general elections usually held in Puerto Rico, gives no support to Petitioner's life tenure construction. Said Section 21, as originally written in Senate Bill No. 1, was there inserted to correspond harmoniously with the provisions of Section 50, as originally drafted and approved. The very fact that Section 21 was amended before approval, when taken in connection with the further fact that Section 50 was not amended at all before approval, sufficiently shows that the limited term idea was not abandoned by the legislators. Naturally, when amending Section 21, the lawmaker could not then fix *expressly* a four-year term for the City Manager because it would not coincide with the term as fixed in Section 50 for the first Board of Commissioners and an interregnum would occur, for, at the expiration of four years after 1931, more than a year would have to pass before a new City Manager could be chosen in the 1936 general elections. Hence, Section 50 remained unamended, but providing that "the Board of Commissioners created by this Act" should be elected by popular vote at the general elections to be held in 1936 and every four years thereafter, while the new Section 21 provided that "the Board of Commissioners created by this Act" should appoint the City Manager.

The change effected through the amendment to the original draft of Section 21 was manifestly grounded solely on the idea that the office of City Manager be created as an appointive, rather than an elective post. That this idea was prevalent is further shown, *a contrario sensu*, by the two bills presented during the legislative sessions of 1936 and 1937, whereby the office of City Manager is sought to be changed from an appointive to an elective post. These two bills tended simply to change the manner of filling the office, not its tenure, which was already generally understood to be limited to four years. The two bills, even with respect to the proposed change in the manner of filling the office, were nothing but a confirmation and ratification of the generally understood and accepted meaning of the statute, since in reality the Commissioners had always been elected on their pledge as to the person for whom they would vote, if successful in the elections, to fill the post of City Manager. The situation is similar to that occurring in the selection of the President of the United States.

A further indication must be made with reference to the original draft of Section 21. It provided for a Mayor to be elected quadrennially. But Section 50, also of the original bill, provided for popular election of the Board of Commissioners, beginning in 1936, while Section 9 provided for an appointive Board of Commissioners to hold their offices until the first Monday of January, 1937, that is, for a period of five years and four months.[105] Therefore, if Section 21 as originally drafted had been left unamended, it would not have been possible to choose or have a City Manager during one year and four months immediately after the act went into effect.[106] A hiatus

[105] Act No. 99 went into effect on August 15, 1931, i.e., three months after its approval (Section 52).

[106] Because the 1932 general elections would not be held until the first Tuesday after the first Monday in November. See sec. 29, Organic Law of Puerto Rico, Act March 2, 1917; 39 Stat. 951.

would have resulted in the new government set-up. Hence, to obviate this grave difficulty, Section 21 was approved in the form it now stands, that is, in harmony with Section 9, providing for a City Manager to be appointed by the Board "created by this Act." Therefore, it was generally understood at the time, and subsequently thereafter, that the first City Manager, as also the first Board of Commissioners, under the Act, were to hold office only until the first Monday of January, 1937, that is, until the date when the Board members to be elected in 1936[107] should enter into possession of their offices, which date coincides with the statutory expiration date of the term of office of the last appointive Board member.

The lawmakers, therefore, in amending the original draft of Section 21 did not have in mind the idea of tenure of the City Manager, but only the wish to avoid such hiatus and to install a provisional appointive administration for the City of San Juan to last until the general elections of 1936.

Petitioner's reference to two opinions of the Attorney General of Puerto Rico, rendered on December 8, 1936 and January 30, 1937,[108] does not support his contention in any substantial manner. Said opinions cover points of law different from the one here involved. The first one refers to the inquiry as to whether the Board of Commissioners, holding office in 1936, could appoint a new City Manager to take office prior to the expiration of the leave which that Board had granted to Mr. Benítez Castaño. Section 25 of the Act was construed by the Attorney General of Puerto Rico in the sense of not allowing such appointment until the expiration of the leave. Section 21 of the Act was not even mentioned in the opinion.

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[107] As provided by Section 50 of the Act.

[108] Brief for Petitioner, Appendix C, page 50, and Appendix D, page 52.

The second opinion of the Attorney General of Puerto Rico, referred to by Petitioner, covers only the questions (1) as to the term of the officers and employees of the Capital which were appointed on September 11, 1931, and (2) if the new administration elected in 1932 was a continuation of the former administration. Although in this second opinion, reference is made to Section 21 of the Act, such reference is mere dicta and has no value at all.

Finally, a brief examination of the context of the statute will be helpful in the determination of the correctness of the Puerto Rican Supreme Court's construction of the Act as providing for a limited tenure, instead of a tenure for life, for the office of City Manager of San Juan.

Section 21 provides that the City Manager is the chief executive of San Juan. He is appointed and may be removed for cause by the Board of Commissioners created by the Act. He may be suspended by the Board and the payment of his salary stopped, when charges are filed against him (Section 23). The City Manager appoints, and may remove for cause, five of the six officials of the City Government (Section 26). The other one, the Auditor of the Capital, is appointed and may be removed for cause by the Board (Section 36).

The City Manager has the direction and superintendence of all the officials of the City, including the Auditor (Section 29). The City Manager represents the Capital in all judicial actions, but he cannot acquiesce in the complaint or fail to answer the same, or submit such action or proceeding to arbitration without the previous written consent of the Board of Commissioners (Section 30). The City Manager has charge of the direction of such offices and employees as the Board may assign to him (Section 31). The Treasurer, the Director of Public Works, the

Director of Health and Charity, the School Director, the Auditor and the Secretary, even though appointed by the City Manager, except the Auditor, are subjected to orders and duties, in addition to those defined by law, to be defined by the Board of Commissioners (Sections 32, 33, 34, 35, 36 and 37).

The Board of Commissioners is invested with extraordinary powers, legislative and administrative in character (Section 18). It is the governmental body of the Capital (Section 9). It approves the annual budget of receipts and expenditures (Section 18 (1)). It creates such positions as may be strictly necessary for the Government of the Capital, and no sala is to be paid to any employee whose position is not previously created by ordinance or resolution of the Board which shall specify the powers and duties of such employee, and shall state the necessity of such position for the public service (Section 18 (5)).

It will thus be readily seen that the City Manager cannot fairly and adequately discharge the duties of his office unless cooperation exists between it and the Board of Commissioners, and vice versa. Should the Board and the City Manager belong to opposite political parties, or believe in different social theories or in different economic programs, a deadlock in the governmental machinery might easily ensue. The City Manager could not appoint any employee at all, since payment of the salaries of employees and creation of their employments require a resolution or ordinance of the Board. Conceivably, the Board might even fail to provide for the salary of the City Manager by failing to approve in the annual budget any appropriation therefor. Untold embarrassment would result. Certainly such chaos and disorder should not be identified as the legislative meaning and intention in establishing the Government of the Capital of Puerto Rico.

Point II. D.

The judgment of January 14, 1942 implies a permanent stay of execution. Whether it results in an amendment of the prior judgment is immaterial in the premises. Petitioner's term of office as City Manager having expired after the judgment of reinstatement was entered and during the pendency of appeal proceedings, it "would be contrary to the statute and to justice that, availing himself of the terms of the judgment, Petitioner should be reinstated in an office to which he has no right" (R. 39). The Puerto Rican Supreme Court had jurisdiction to so act. Indeed, the authority of courts to stay execution has been referred to as an inherent one.

Petitioner's argument under this assignment of error undoubtedly must take for granted the correctness of his construction of the statute as to the tenure of office of the City Manager of San Juan. It does not seem possible or logical that it could be otherwise, for assuming that the City Manager's term of office is limited to four years, no rational argument could be made to persuade any court that a man whose term of office has already expired should, notwithstanding, be inducted into that office.

Therefore, this assignment of error is really superfluous. The determination of the other points raised by Petitioner will make it unnecessary to pass upon this last contention.

Nevertheless, it is only appropriate that Respondent should clear certain suppositions made by Petitioner throughout his argument.

There is no basis on the Record to warrant or justify the assertion that the Puerto Rican Supreme Court, in dealing with Respondent's motion for stay of execution, regarded it as involving a question of mixed law and fact.

Said motion for stay raised a point of statutory construction no different from any other problem of interpretation of laws. It is almost superfluous to repeat at this point the rule that, for purposes of ascertainment of legislative intent, as expressed in a statute, no factual questions are considered, no evidence is offered or admitted, in the usual, well-understood meaning of the term.

Petitioner calls attention to the discrepancy of one month between the theory of the Board and that of the Court as to the date of expiration of the four-year term of office of the City Manager, and says that such discrepancy is not satisfactorily reconciled anywhere in the Record. It really appears quite clearly explained therein. Under Section 50 of the Act, as originally approved [109], the term of office of the first Board of Commissioners expired on "the first Monday in January of 1937". But Section 50 was amended on March 24, 1937 [110], *after the appointment of Petitioner*, to provide that the Board of Commissioners elected in 1936, with its increased membership, should "continue in office until the end of the term for which they were elected * * *" [111] and to provide that successive Boards of Commissioners "shall take office on the second Monday in February following each general election." Hence, the Board elected in 1936 (the one which appointed Petitioner City Manager), had by express mandate of the statute a term of office which would expire on the second Monday in February following the general elections of 1940, i.e., on February, 1941. And since City Managers are appointed by the Board of Commissioners in their inaugural sessions, necessarily Petitioner's term of office would last until the second Monday of February, 1941, that is, the day when the new Board to be elected in

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[109] Brief for Petitioner, Appendix A, page 46.
[110] Brief for Petitioner, Appendix A, page 46.
[111] Ib.

1940 should enter into office and appoint a new City Manager [112].

Granted, for the purpose of argument of this assignment of error, that the term of the City Manager is limited to four years, "it would be contrary to the statute and to justice that, availing himself of the terms of the judgment, Petitioner should be reinstated in an office to which he has no right" (R. 39).

As a matter of law, the judgment of reinstatement became inoperative upon the expiration of the term of office.

Gordon v. *State*, 47 Tex. 208.

Under the circumstances, the authority of courts to stay execution forever has been referred to as an inherent one.

American Surety Co. v. *Fishback*, 163 P. 488.
Lineham v. *McNeill*, 31 Dom. L. R. 768.

The question presented by this assignment of error has been clearly decided against Petitioner by this Court. See *Boynton* v. *Ball*, 121 U. S. 457, 30 L. ed. 985, 7 Sup. Ct. 981.

Whether under the provisions of Section 7, subdivision 8, of the Code of Civil Procedure of Puerto Rico, or under inherent authority, or in furtherance of justice and right and to prevent injustice and delay,[113] the Puerto Rican Court was plainly justified in refusing to order reinstatement of Petitioner into the office of City Manager, his term of office having already expired in February, 1941.

Conclusion.

The opinion and judgment of the Supreme Court of Puerto Rico, affirmed by the Circuit Court of Appeals for

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[112] See also the pertinent paragraphs in the opinion of the Puerto Rican Supreme Court, R. 44.

[113] Act March 12, 1903, Section 1, Laws of Puerto Rico, 1903, page 59.

the First Circuit, is correct, represents the only true and fair interpretation of the Puerto Rican Legislature's intention as reflected in Act No. 99 of 1931, and, consequently, should not be disturbed by this Court.

Respectfully submitted,

F. FERNANDEZ CUYAR,
Attorney for Respondent.

H. GONZALEZ BLANES,
Of Counsel.

APPENDIX A.

Pertinent Sections of Act No. 99 of the Puerto Rican Legislature.

Approved May 15, 1931.

(Laws of Puerto Rico, 1931, pp. 626-656.)

Section 18.—Subject to other provisions of this Act, the Board of Commissioners shall have, among its other legislative and administrative powers, the following special powers:

(1) To approve the annual budget of receipts and expenditures;

(2) To sell, exchange, encumber, or lease real and personal property belonging to the Capital; Provided, That ordinances selling, exchanging, encumbering, or renting waterworks, electric plants, or any other establishment or plant for the exploitation of a public service for the Capital, shall be ratified and approved by the Legislature;

(3) To authorize loans, subject to the approval of the Executive Council of Porto Rico;

(4) To levy reasonable taxes and excises within the jurisdictional limits of the Capital; Provided, That for the purpose of applying the industrial and commercial license tax act approved by the Legislature of Porto Rico on March 28, 1914, the Board of Commissioners is hereby authorized to include, by means of an ordinance or resolution, any industrial or commercial establishment or agency not enumerated in said act;

(5) To create such positions as may be strictly necessary for the government of the Capital, and to provide the corresponding salaries in the budget; Provided, That the Board of Commissioners may not create any department or office in addition to those herein prescribed; Provided, further, that no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties

of such employee, and stating the need of the position for the public service;

(6) To create any independent board or commission to administer the waterworks or any other public service of the capital.

Section 29.—The City Manager shall have the direction and superintendence of all the officers of the Capital. He shall see to the good government of the city, and shall take such steps as are not in conflict herewith to require due exercise of the powers and due performance of the duties hereby imposed on the other officers of the Capital, in such manner as he reasonably believes most convenient to the best public service.

Section 30.—The City Manager, in his corporate and official capacity, shall represent the Capital in all official, judicial or extrajudicial actions brought by or against the Capital, and in such capacity he may appear and maintain all kinds of rights, actions and proceedings before any court of justice, organism or officer. In no proceeding or action where the Capital, represented by the City Manager, is a party, may the City Manager acquiesce in the complaint or fail to answer the same, or submit such action or proceeding to arbitration, without the previous consent of the Board of Commissioners.

Section 31.—The City Manager shall receive an annual salary of six thousand (6,000) dollars. He shall inspect and superintend all the public services of the Capital; issue reasonable rules to which municipal employees shall be subject in the performance of their duties and obligations, and, in addition, shall have immediate charge of the direction of such offices and employees as the Board of Commissioners may assign to him.

Section 32.—The treasurer shall have charge of the collection and custody of the public funds of the Capital, and shall make payments for public services and obligations according to such regulations, not incompatible herewith, as may govern on the subject. He shall also perform such other duties as are imposed on him by this Act and by other

laws in force, and by the resolutions and ordinances of the Capital.

The treasurer shall be a person competent in matters of public finance, and shall receive a salary of four thousand five hundred (4,500) dollars a year.

Section 33.—The Director of Public Works shall direct and manage all the public works of the Capital. He shall have charge of all municipal buildings, properties and lands, and shall fulfill all the requirements and perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital.

The Director of Public Works shall be a duly authorized engineer or architect, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 34.—The Director of Health and Charities shall have charge of all administrative matters and services connected with public charities, health and cleaning.

He shall be in charge of the administration of all the hospitals, asylums and first-aid dispensaries, and of the public-health and cleaning services. He shall fulfill all the requirements and perform all the duties imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital.

The Director of Health and Charities shall be a duly authorized physician-surgeon, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 35.—The School Director shall exercise all the functions and powers, and shall perform, in the Capital, all the duties of the former school boards. He shall be, or shall have been, a principal teacher or an inspector of public education, or a person holding a professional degree.

He shall have charge of all matters relative to public education in the Capital, and shall fulfill all the requirements and perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital. He shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 36.—The Auditor of the Capital shall be appointed by the Board of Commissioners. This official may be removed by the Board of Commissioners for just cause, after a hearing and an opportunity to defend himself either personally or by attorneys. Causes for removal of this official shall be any act performed by him which constitutes a felony; any act performed by him which constitutes a misdemeanor and implies moral turpitude; carelessness or inexcusable negligence, or immoral and incorrect conduct, in the discharge of his office.

The Auditor of the Capital shall have all the powers, functions and duties, as regards the Capital, as are vested in the Auditor of Porto Rico as regards the Insular Government of Porto Rico, subject to the provisions of the Organic Act and to such regulations, not incompatible with this Act, as the Auditor of Porto Rico may prescribe. He shall sign all warrants and orders for the payment of money from the public funds of San Juan, and shall have custody of all the real and personal property of the Capital. It shall be his duty to demand responsibility from all officers or employees of San Juan under whose immediate custody any of the Capital's property may be, and he shall immediately report to the Auditor of Porto Rico and to the Board of Commissioners any damage suffered by any city property.

The Auditor shall issue all payment warrants against funds of the Capital, and together with the Treasurer, shall sign all the checks, drafts, credit certificates and disbursements of the Capital. He shall keep the Capital's accounts with full details of all receipts and expenditures.

The Auditor may prepare, for compliance by the officers and employees of the Capital, regulations on the custody of municipal property, provided such regulations are not incompatible with the provisions of the Organic Act, of this Act, of other laws in force, or of the ordinances and resolutions of the Board of Commissioners, and he may require an adequate bond from all employees whose functions are connected with the collection of public funds. He shall render annually to the Board of Commissioners a detailed and complete report of all municipal property.

The Auditor of the Capital shall be a person competent in public accounting, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 37.—The secretary shall have all the powers, functions and duties in connection with the Capital as are vested in the Executive Secretary of Porto Rico in connection with the Insular Government, subject to the provisions of the Organic Act and other laws of Porto Rico. He shall be the secretary of the Board of Commissioners and of the Administration Board. He shall have charge of the general archives of the Capital; shall keep the minutes of the Board of Commissioners, and shall certify the ordinances and resolutions adopted by said Board; and shall perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital. He shall have charge of the civil registry of the Capital.

The secretary shall be a person of experience in the functions of a municipal secretary, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 52.—This Act shall take effect ninety days after its approval.

Approved, May 15, 1931.

APPENDIX B.

IN THE SUPREME COURT OF PUERTO RICO.

No. 8070.

CARLOS M. DE CASTRO, *Petitioner and Appellant,*

v.

BOARD OF COMMISSIONERS OF SAN JUAN,
Respondent and Appellee.

Appeal from the District Court of San Juan, P. R.

On Appeal to the U. S. Circuit Court of Appeals for the First Circuit.

I, Joaquín López, Secretary-Reporter of the Supreme Court of Puerto Rico, do hereby certify:

That in the record of the above entitled-case the following document appears, which, translated into English, reads thus:

"GOVERNMENT OF THE CAPITAL
"San Juan, Puerto Rico

"Board of Commissioners.

"I, Lino Padrón Rivera, Secretary of the Capital and of the Board of Commissioners, hereby certify:

"That in the Minutes of the inaugural session held by the Board of Commissioners of San Juan on February 10, 1941, there appear, among others, the following particulars:

"'Commissioner Mr. Maisonett presents a proposed Resolution by its title which reads as follows: "TO APPOINT HONORABLE FERNANDO J. GEIGEL CITY MANAGER OF THE CAPITAL; AND FOR OTHER PURPOSES".

"'Commissioner Mr. Díaz Collazo speaks in opposition to the proposed Resolution because of his understanding that Honorable Fernando J. Géigel is

now Mayor of San Juan and the mayor of all the citizens of the Capital of Puerto Rico, representing every political faction in such capacity, and he asks that, there being no other candidate, the appointment of Mr. Fernando J. Géigel be voted viva-voce.

"'The President intervenes stating to Commissioner Mr. Díaz Collazo that the only way through which the last part of his motion might be expedited is by having the consent of the author of the Resolution to withdraw the same, and Commissioner Mr. Maisonett having consented thereto and having withdrawn his proposed Resolution, the motion of Commissioner Mr. Díaz Collazo stands, and Commissioner Mr. Maisonett having seconded said motion, viva-voce, the Honorable Fernando J. Géigel is then appointed City Manager of the Capital. All the Commissioners stand up as a demonstration of recognition and public enthusiasm.

"'The President appoints Commissioners Messrs. Domínguez, Maisonett and Díaz Collazo to accompany the City Manager to the session room and said Committee withdraws for that purpose, returning within a short time afterwards accompanying the Honorable Fernando J. Géigel amidst the applauses of the Commissioners and of the public.

"'The President makes known to Mr. Géigel that the Board of Commissioners has just appointed him viva-voce City Manager of the Capital, making him its only candidate, and the Secretary of the Capital proceeds forthwith to administer the following oath of office:

"'"I, Fernando J. Géigel, of San Juan, Puerto Rico, appointed City Manager of the Capital by the Board of Commissioners of San Juan in its inaugural session held on February 10, 1941, do solemnly swear that I will maintain and defend the Constitution of the United States and the laws of Puerto Rico against all enemies, external and internal; that I will pledge fidelity and adherence to said laws; that I assume that obligation freely, without mental reservation or intent

of evading it; and that I will discharge well and faithfully the duties of the employment or office which I am about to exercise. So help me God.

"(Sgd.) FERNANDO J. GÉIGEL,

[THE SEAL OF THE CAPITAL]

Aff. No. 944

Sworn to and subscribed before me by Mr. Fernando J. Géigel, to me personally known, this 10th day of February, 1941.

LUIS A. CASTRO, *Secretary.*"

"'With the President's permission, the Honorable City Manager of the Capital proceeds to read a speech emphasizing the work done by the Administration since he assumed the duties of the Office of Chief Executive, and the work which — intends to perform during the period of time comprised between 1941 and 1945.'

"In witness whereof, I issue the present certificate under my signature and the official seal of the Capital in San Juan, Puerto Rico, this 28th day of November, 1941.

"(Sigd.) LINO PADRÓN RIVERA,
Secretary of the Capital."

I hereby further certify that the original of the above-transcribed document was filed in this Court by the Board of Commissioners of San Juan on December 6, 1941, annexed to its memorandum or brief in support of its motion for stay of execution.

And at the request of F. Fernández-Cuyar, Esq., I issue these presents, in San Juan, Puerto Rico, this 10th day of April, 1944.

JOAQUIN LOPEZ,
Secretary-Reporter of the Supreme Court of Puerto Rico.

[SEAL, SUPREME COURTS OF PUERTO RICO.]

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

ORAL ARGUMENT ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

April 24, 1944.

WILLIAM CATTRON RIGBY,
FRED W. LLEWELLYN,
GABRIEL DE LA HABA,
Attorneys for Petitioner.

HUGH R. FRANCIS,
RIGBY, LEON & WEILL,
Of counsel.

F. FERNANDEZ CUYAR,
Attorney for Respondent.

H. GONZALEZ BLANES,
Of counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

ORAL ARGUMENT ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.*

Washington, D. C.,
April 24, 1944.

The above-entitled cause was argued in The Supreme Court of the United States, commencing at 1:12 o'clock p. m. on Monday, April 24, 1944,

Before:

HONORABLE HARLAN F. STONE, the Chief Justice; and
HONORABLE OWEN J. ROBERTS;
HONORABLE HUGO L. BLACK;

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* Reported by H. S. Middlemiss, Columbian Bldg., Washington, D. C.

HONORABLE STANLEY F. REED;
HONORABLE FELIX FRANKFURTER;
HONORABLE WILLIAM O. DOUGLAS;
HONORABLE FRANK MURPHY
HONORABLE ROBERT H. JACKSON; and
HONORABLE WILEY RUTLEDGE, Associate Justices, there being

Present:

On behalf of the Petitioner:

COLONEL WILLIAM CATTRON RIGBY, and FRED W. LLEWELLYN, ESQUIRE; and

On behalf of the Respondent:

F. FERNANDEZ CUYAR, ESQUIRE.

Thereupon the following proceedings were had and oral arguments made:

PROCEEDINGS AND ORAL ARGUMENTS.

The Chief Justice: The case of Carlos M. de Castro, Petitioner, against Board of Commissioners of San Juan, No. 349.

Counsel will proceed to argument.

Oral Argument on Behalf of the Petitioner.

By Colonel William Cattron Rigby.

Colonel Rigby: If the Court please.

The Chief Justice: Colonel Rigby.

Colonel Rigby: This is certiorari to the First Circuit.

The two questions of importance that are involved are, first, the length of the tenure of office of the City Manager of the Capital of Puerto Rico, San Juan, whether it is a life tenure or a four-year tenure.

Section 21 of the Act constituting the Government of the Capital of Puerto Rico, provides that the City Manager hold office during good conduct.

The Supreme Court of Puerto Rico holds that because of surrounding circumstances and history that that meant only four years.

We think that the language of the Act means for life, subject to removal in case of failure of good conduct.

The second question is as to the respect to be paid the decisions of the Territorial Courts of last resort.

Under a rule of this Court in existence for the past seventy years on that subject, the Circuit Court of Appeals for the First Circuit holds that the Rule makes their jurisdiction over appeals from the Supreme Court of Puerto Rico, in matters relating at all to local law, pretty much of a dead letter and, on that ground, they held that in this case, while if they were free to determine the question for themselves they should have been inclined to believe and to decide that the decision of the Supreme Court of Puerto Rico holding that the statute giving the term of office for good conduct to the City Manager was improperly interpreted by the Insular Supreme Court as holding it means only four years, nevertheless, they felt that they could not properly say that that decision was inescapably wrong within the meaning of the rule of this Court as they interpreted it and, therefore, they affirmed the decision of the Insular Court.

This Court granted certiorari and, I might say, I think properly and, at the same time that this certiorari in this case was granted, last February 28th, this Court ordered that this case and the next following case, the case of *Mario Mercado E. Hijos* v. *Elvira Olivieri Commins, et al.*, be argued at the same time, because that case also involves the question of the interpretation of this Rule.

In this case, in the Fall of 1938, the Board of Managers or Commissioners of the Capital, of San Juan, brought proceedings against the City Manager to remove him for cause, charging some nineteen different cases.

Of course, it was a political matter.

It came on for hearing in the—

Mr. Associate Justice Black (interposing): When you say that it was a political matter, just what do you mean?

Colonel Rigby: A matter of charges made. There was a political fight on between the parties.

There were nineteen charges presented but, as to twelve of them no evidence was presented at all on the hearing before the Board. They did not press three more of the charges and, at the end of the hearing there were four charges considered by the Board. At the end of the hearing there was a finding of guilty on those four charges.

There was an appeal to the District Court at San Juan. That Court found no evidence as to two of those charges and, as to the other two the Court held that there was conflicting evidence and that therefore the findings of the Board were conclusive and affirmed removal on that ground and, on appeal to the Supreme Court of Puerto Rico the removal was set aside, the Court finding that the only two charges of which there were or was any substance were two relating to the management of the waterworks of the Capital and, after a long trial, as the Insular Supreme Court said, "We cannot at this writing say what it was the Mayor should have done that he did not do" and therefore set aside the findings entirely and vacated the removal.

On appeal to the Circuit Court of Appeals to the First Circuit that was affirmed; it was affirmed without hearing, under Rule 39 (b), which we question here and also under which they said they were not in any position to determine a question of local law, but affirmed the finding.

This Court denied certiorari on October 13, 1941.

Up to that time there had been no question at all as to the length of the term of office for the City Manager.

However, when the mandate of this Court went back to the Circuit Court of Appeals and then to the Supreme Court of Puerto Rico, then on October 27, 1941, for the first time, the question of the length of the term of office of the City Manager was raised because—

Mr. Associate Justice Reed (interposing): When did his term expire, according to their contention?

Colonel Rigby: On February 10, 1941, their contention was.

The Chief Justice: That was four years?

Colonel Rigby: That was four years?

Mr. Associate Justice Reed: That was after the decision of the Supreme Court of Puerto Rico?

Colonel Rigby: After the first decision in 1940, and a few days—well, about a month after the decision of the Circuit Court of Appeals and on the same day, as a matter of fact, February 10, 1941, when the respondent filed a petition for reconsideration with the Circuit Court of Appeals, without raising that question at all, and three months before their filing of a petition for certiorari, in May, 1941, in this court, in which they did not raise the question at all.

They raised the question for the first time when it went back and, on October 27, 1941, they filed a petition to stay the execution of so much of the Order of the Supreme Court of Puerto Rico as included the direction to reinstate him in his position as City Manager, setting up then that his term was only a four-year term.

The Supreme Court of Puerto Rico considering that the statutory language of Section 21 of the Act directing that the term of the City Manager shall be—the Chief Executive of the Capital: "He shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct," was uncertain and indefinite enough so that evidence or matters of judicial notice could be taken into consideration to determine whether or not under all the circumstances it meant what apparently it said, "during good behavior," proceeded to hold that because the term of office of the Commissioners, of the Board of Commissioners by whom he was appointed, was a four-year term, and because it appeared that they took into judicial notice that there had been, before each election in 1936 and in 1940, candidates announced by the political parties of the Island for the office of City Manager, and because in 1940, after he had been removed, and while the litigation

was pending, de Castro himself was a candidate for the Legislature of the Island, that it was a general understanding that the language does not mean just what it says and that he should be held to hold office for only four years.

Now, it is fair, perhaps, and right to go into a little history of the situation in connection with that:

The Act was passed in 1931.

Prior to 1931 the General Law concerning municipal governments in the Island was in force in San Juan, in the Capital; that is, in its last form, the Act of 1928, which was amended by the way in May, 1931, on the same day that this special law for the Capital went into effect, and that Act provided that the chief officer of the municipality should be a Mayor, elected for a four-year term, every four years, without any question.

The 1931 Legislature adopted this entirely new plan for the Government of the Capital City, designating it the Capital of Puerto Rico.

As the Bill was first introduced in the Legislature, it provided, in Section 21, for a Mayor to be elected for four years, for a four-year term every four years, in the same way as had been provided for the municipality. The Bill was amended, however, during the course of its passage in the Legislature and emerged in the form that it now holds and which I have read, which follows the general theory that was then getting pretty widespread throughout the United States, in the continuing of the appointment of City Managers, many of these City Managers, of course, in many cities have been given life terms.

There is rather an interesting discussion of that in Stone and Price's book on City Managers which we have cited in our brief.

The Act was passed in 1931, in May, as I say.

It provided that there should be also a Board of Commissioners the Legislative authority of the City, and Section 9 provided that the Commissioners should have a sort of staggered term, one for one year, one for two years, one

for three, one for four, and one for five years, and no definite four-year appointment for the members of the Board at all, and it provided that there should be a City Manager, a Treasurer, a Director of Public Works, a Director of Health and Charity, a School Director, an Auditor, and a Secretary of the Capital.

Those were the other officers.

The Act provided no definite term of office for those other officers.

The Act provided that all except the Auditor should be appointed by the City Manager and it provided that the Auditor should be appointed by the Board of Commissioners.

Then the Act provided that the employees should hold office for the terms, respectively, of the persons appointing them.

Section 39 of the Act says:

> "All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. Said employees shall be appointed for the term for which each officer is appointed."

Now, one of the reasons that the Insular Supreme Court assigned for holding that the intention was to make the appointment of the City Manager for only four years was that, otherwise, there would be confusion and variety in the appointments of the other officers, and that those appointed by the City Manager would hold office for one term and those appointed by the other officers would hold office for another term.

Of course, it seems to us, the plan seems perfectly plain and quite in accord with the usual plan of City Manager scheme, that is, the City Manager should be a permanent, executive, official and hold office during good conduct. Also that he appoint the other officers whose terms are not fixed, and would have the power to determine for what terms he would appoint them, the higher executive officers, except

the Auditor who, quite properly, was appointed not by the City Manager but by the Commissioners who might, in the same way, make such arrangements as to him, and that the minor employees, quite in line with the provisions for the Civil Service establishment in Puerto Rico—and there is a Civil Service law there—were to be in office permanently under Civil Service status as long as the office of the person appointing them continued.

The whole purpose was to remove, as I say, government from political party plum management.

Mr. Associate Justice Reed: Do you take the position that the Treasurer and the Auditor were appointed for an indefinite period during good behavior?

Colonel Rigby: No, no; there was no provision for that. But, in accordance with the Shurtleff case and the Humphrey case, and others recently, we think that the City Manager had power to determine, in appointing those officers, for what length of time he would appoint them or, if he did not appoint them for a definite length of time, that he would have the power to remove them in the same way that it was held in the Shurtleff case and the Humphrey case, that the President charged with the duties of seeing that the laws were faithfully executed has the power to remove in the absence of any provision as to the tenure of office.

Mr. Associate Justice Reed: But Section 39 seems to say that they should be appointed for the term of which the officers are appointed.

Colonel Rigby: The employees, not the officers.

That is the distinction as we read it.

There are six officers, the City Manager, the Treasurer, the Director of Public Works, the Director of Health and Charity, the School Director, the Auditor, and the Secretary of the Capital.

Then there is a provision that the Board of Commissioners may determine what employees are to be employed and those employees who are under policy making officials are not charged with the policy making, and that kind of thing, but are subordinate employees, as we read it.

The Chief Justice: You derive that from the meaning of the statute, not the constitutional grounds.

Those cases that you cited were all constitutional cases, involving interpretation of the Constitution.

Colonel Rigby: The Shurtleff case and the Humphrey case following was, as we understand it, that the President may remove an officer who is not a—

The Chief Justice (interposing): That is because of his powers as the Executive under the Constitution, but does that have any bearing on the question that we have here and that is: What is the term of office of this man?

Colonel Rigby: No, not strictly and absolutely and, for that reason, we think the Insular Supreme Court was wrong entirely.

The Chief Justice: Do you say that we have no question except this one question: what powers were given in the statute for the appointment and for what term?

Colonel Rigby: Under the term of office of the City Manager—outside of that, the term of office of the City Manager, no, there is no other question here.

There is a question here of whether the Insular Supreme Court was wrong in considering all these questions of possible confusion that they thought might arise from questions of the meaning of the other sections. That had nothing to do with it and was contrary to anything that is advanced.

No, no. We are definite in the position that the proposition before us is an interpretation of that section 21 which says precisely this:

> "The City Manager shall be chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

Mr. Associate Justice Reed: Does the City Manager have employees in his office?

Colonel Rigby: Yes; the City Manager does have employees in his office, contra-distinguished from officials. Employees of his office, yes.

Mr. Associate Justice Reed: What is their term of office, under your theory?

Colonel Rigby: Their term of office apparently is his term of office; they are practically there for life.

Mr. Associate Justice Roberts: He would have power under the other section to fix the appointment of those employees for five years or ten years or whatever he likes.

Colonel Rigby: Of course he would.

Mr. Associate Justice Reed: But section 39 says:

> "Said employee shall be appointed for the term for which each officer is appointed."

Colonel Rigby: Yes. His minor employees have apparently the same term of office he does.

There is a possible confusion.

Mr. Associate Justice Reed: And that Section also says that they can only be removed on charges preferred by him.

Colonel Rigby: Apparently so.

Of course, whether that was a mistake that the Legislature made or whether it was not, is a matter for the Legislature to determine and if it was a mistake it is for the Legislature to correct it as we see it.

I admit that there may be a little confusion there.

Of course, we think that there is no possibility of such ambiguity about the provision of Section 21 as would open it to any discussion as to the effect of these other things, but it was because the Insular Supreme Court thought that there was ambiguity that they went into the other question and, if I may go into another factor there, as we have said, the Insular Supreme Court thought, as we find in its opinion, that the history shows very plainly that at the time everyone concerned understood, as we see it, that the term of the City Manager was for life or during good conduct.

Mr. Associate Justice Jackson: What shows that legislative history?

Colonel Rigby: Several things.

In the first place, if I may be permitted to detail them, there was, as I said at that time, under the four-year term for the Board the provision in Section 50 that beginning in 1936 the Board then coming into office should have a four-year term.

The first City Manager, Mr. Castano, went into office September 11, 1931, I think the date was. Five years afterwards, on September 11, 1936, he wrote a letter to the Board of Commissioners tendering his resignation to take effect 150 working days afterwards, that is to say, on March 18, 1937, a time which does not seem to fit the four-year term or any other term. It was the term that he elected to tender his resignation upon. The resignation was accepted by resolution of the Board dated September 16, specifically accepting it, with pay while he was on leave of absence until the end of that period of time.

The certificate of the Auditor, former Secretary, which we have here and have appended as an exhibit to our reply brief put on file this morning, because we just finally got it, established that Mr. Castano received his pay during that whole 150 working days.

The next officer in line, the Treasurer, Mr. Bolivar Pagan, now the Commissioner of Puerto Rico in Washington, automatically took office as acting City Manager upon that date, and continued as acting City Manager until the 4th of the following January.

In the meantime, at the election of 1936, the new Board of Commissioners had come into office and, at the request of that Board made to the Attorney General of Puerto Rico, the Attorney General on December 8th wrote an opinion as to whether the Board—on being asked whether the new Board could proceed to elect a City Manager to fill the vacancy, and he said that it was premature for the outgoing Board to ask the question; that the new Board would be the one to ask that; and he said that they could not fill the vacancy made by Mr. Castano's taking leave of absence

during his term of leave of absence, because he was still the City Manager.

The Board acquiesced in that; and then the new Board coming into office, on the following January 4th, also acquiesced in that, and, instead of appointing a new City Manager, instead of appointing Mr. de Castro whom they desired to appoint, who had been a candidate for City Manager in view of Mr. Castano's resignation on the previous September 11th, Mr. Bolivar Pagan took leave of absence as Treasurer, but before doing that he appointed Mr. de Castro as the Director of Health and Charity. Then he himself being automatically as I have said, acting City Manager, took leave of absence and that left the next man, the Director of Public Works as the City Manager or acting City Manager. He also took leave of absence, and in that way made Mr. de Castro, the new Director of Health and Charity, the acting City Manager. But de Castro did not draw pay as City Manager; and only on March 19th following, the day after Mr. Castano's leave of absence expired, then he was elected by resolution, which is an exhibit here, as City Manager.

In the meantime there had been another opinion by the Attorney General on January 30, holding squarely that the term of office of the City Manager was during good behavior, good conduct.

Then at the session of the Legislature then pending, a Bill was introduced to amend Section 21 so as to provide for a Mayor to be elected for four years, and the Legislature rejected that Bill, did not pass it; and, at the following session in 1937 a similar bill was again introduced in the Legislature, in the Senate, and the Legslature rejected it.

Then as I have said, during all the time while the first phase of the litigation was pending concerning the attempted removal for cause, no allegation was ever made anywhere in the pleadings or in the briefs, setting up this claim of a four-year term of office, even though, as I have said, when the petition for rehearing was filed in the Circuit Court of Appeals, that was the very day that they now say de Cas-

tro's term of office had expired; and when the petition for certiorari was filed here, that was three months after they now say it had expired; and if the Supreme Court of Puerto Rico, which was simply the Appellate Court itself to which the appeal had been brought from the District Court, had power to entertain that question before sending its mandate down to the District Court then the Circuit Court of Appeals likewise had the same power and it would have been just as proper to have presented that question to the Circuit Court of Appeals in connection with the petition for rehearing or to this Court in connection with the petition for certiorari; so it seems to us it really was an after thought in that respect.

Now, that brings us to the action of the Circuit Court of Appeals which really, in its opinion, went over about the same ground I have gone over here and came apparently to the same conclusion and quite distinctly and directly, that there was no ambiguity in this provision of Section No. 21, that it means just what it says, and it meant the same thing in 1936 and 1937 as it did in 1931 when it was enacted; but then they say "if we were free" we would decide differently from the insular Court.

That to my mind is one of the very important things here.

The Court, speaking by Mr. Justice Magruder says, and this is at page 91 of the record:

> "If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of Section 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause 'and shall hold office during good conduct' as meaning that 'the tenure of office of the City Manager of the Capital is that of four years, provided that during the same he observed good behaviour'."

Mr. Associate Justice Frankfurter: Is either the Circuit Court of Appeals or are we, here, free to take a wholly independent view?

Is it your proposition that this Court in a matter coming from the Puerto Rico Supreme Court should take a wholly independent view?

Colonel Rigby: I think so.

Mr. Associate Justice Frankfurter: What do you mean by that?

Just paraphrase that: What you think our function is in reviewing a judgment of the Puerto Rico Supreme Court dealing with Puerto Rico legislation.

Colonel Rigby: I have tried to say here in our brief in one paragraph what we think that it means, at the bottom of Page 15 and the top of Page 16 of our brief, as we construe it.

> "This rule is only that, in cases presenting two or more practical solutions of a local problem, where the Territorial Court has arrived at a solution 'not unsupported by logic or reason', it is not to be overturned, in view of the respect properly to be accorded to the decisions of local courts upon matters primarily of purely local concern."

That is, as we think, the gist of the situation.

In appendix F of the brief here we have quoted, I believe, all the cases that we have been able to find in this Court stating this rule.

Mr. Associate Justice Frankfurter: What pages?

Colonel Rigby: Pages 63 to 79 where we have quoted and summarized all of the decisions that we could find. I believe we have combed the field pretty well concerning this rule, beginning with the first decision away back in 1874, in the case of *Sweeney, et al.* v. *Lomme*, and going down to the last one which is a decision in the second Rubert Hermanos, Incorporated, case reported in 315 U. S. 637.

Mr. Associate Justice Reed: I take it you do not argue that the First Circuit should act as though it were a court of equity reviewing the judgments of the lower District Court?

Colonel Rigby: No—of course—I think the rule is, as nearly as I can summarize it, just what I have said, and I do

not understand that the decisions in the two Sancho Bonet cases, *The Treasurer of Puerto Rico* v. *The Texas Company* in one case, 308 U. S. 463, and against the *Yabucoa Sugar Company*, reported in 306 U. S., were intended by this Court to change that rule in any substantial way: In fact, both of those cases, of course, were founded directly upon the former decisions and both of them were cases where there had been overturning of the decisions of the Insular Court, in cases where it was very plain that there were at least logic and reason behind the decisions of the Insular Supreme Court, and that where, as this Court said in the *Texas* case particularly, while of two views of the interpretation of the local statute, the one which the Circuit Court of Appeals of the First Circuit had taken was one view which was reasonable enough itself, yet the view the Insular Supreme Court had taken was also as reasonable, at least, and under those circumstances this Court would not uphold the Circuit Court of Appeals in setting up its own view, even though that in itself may be equally reasonable or more reasonable, against the view of the Insular Court which was also reasonable.

Mr. Associate Justice Frankfurter: Have you included in your brief the present state of the jurisdictional authority of the Federal Courts over the outlying domain, including Alaska, Hawaii, et cetera, to see as to which there is appeal and as to which the mode of review is expressly by certiorari as in the Philippines?

Colonel Rigby: No, I have not.

Mr. Associate Justice Frankfurter: Do you happen to know why Congress cut off review of the acts of the Supreme Court of the Philippines except by certiorari and it did leave appeal from the Supreme Court of Puerto Rico?

Colonel Rigby: The answer to that, is it not, is that from beginning legislation the Congress has taken a different course for the Philippines than for Puerto Rico? In

the very beginning, the Senate, at the time of the approval of the Treaty with Spain—

Mr. Associate Justice Frankfurter (interposing): Not on this point, as far as I recall.

Colonel Rigby: What is that?

Mr. Associate Justice Frankfurter: Not on this point.

As to both the Philippines and Puerto Rico, appeal might come direct to this Court from the Supreme Court of those two Islands or the Archipelago and the Island until it was cut off in the case of Puerto Rico to the First Circuit in 1913?

Colonel Rigby: My thought is—the only thing I know is that that goes to the general difference in the course of legislation between the way Congress has considered the Philippines and Puerto Rico from the beginning, is the only explanation I know for it having done that. Of course, in the Philippines from the first it looked forward, apparently, to not continuing permanent sovereignty over the Philippines.

At the time of the approval of the treaty with Spain—

Mr. Associate Justice Frankfurter (interposing): A good many cases come here or did come here as a matter of right, in 1925, and the Puerto Rico cases were shunted off from this Court to the First Circuit in 1913, I think.

Colonel Rigby: To the First Circuit; I think at about that time.

Mr. Associate Justice Frankfurter: What I want to know is why, when 1925 came along, that was done; and whether there is any light on the subject that Congress did not assimilate the mode of review of the Islands' Supreme Court to that of Puerto Rico.

Colonel Rigby: I should be glad to make inquiry into that and include it in a memorandum which I may file here.

Mr. Associate Justice Frankfurter: Also: What light there is in reference to the other outlying domains, whether this was a survival without thought that no one got around to, or was by some design as to the relation of the review

over the Puerto Rico Supreme Court so differently dealt with than in the case of the Philippines.

Colonel Rigby: I will be glad to. Of course, Hawaii and Puerto Rico are dealt with in the same way.

Mr. Associate Justice Frankfurter: And the Virgin Islands and the Panama Canal; they were distributed among the various circuits.

Colonel Rigby: I will be glad indeed to put a memorandum on file.

I think, for the moment, that that is all I have to say.

Oral Argument on Behalf of the Respondent.

By F. Fernandez Cuyar, Esquire.

Mr. Cuyar: I think the facts have been pretty fairly stated by counsel for the petitioner.

Of course, I shall have to clear up one or two points of fact:

I wish in the first place to make it clear that the reason why the Board did not raise this question of tenure in its first appeal to the Circuit Court, the First Circuit, is very evident, and the reason why it did not raise this question of tenure in its petition for certiorari before this Court, is also evident and is because, manifestly, it was immaterial in the case.

The first judgment rendered by the Puerto Rico Supreme Court dealt only with the issue as to whether valid charges had been preferred which constituted due cause for removal within the statutory concept, and whether evidence supported those charges.

Therefore, on appeal from a judgment of the Insular Supreme Court to the Circuit Court, obviously no question of tenure could have been involved and, correspondingly, on a request for a writ of certiorari to this court from the judgment of affirmance from the Circuit Court, the Board could not assign or predicate any error based on termination of a tenure of office which had not been discussed or elicited in any of the inferior courts.

But when the mandate of the Circuit Court of Appeals, after the petition for certiorari was denied here, came down, and was received in the Insular Supreme Court, the tenure of office of petitioner had expired, as we view it.

Since the judgment to reinstate was affirmed, and had been entered by the Supreme Court of Puerto Rico on appeal from the District Court of San Juan, that was a judgment of reversal and, upon receipt of the mandate, as I said, the Insular Supreme Court acquired jurisdiction in the premises in that case, and I do not think it needs much argument or authority to sustain the proposition that if such was the case, assuming for the purposes of this argument that our contention is correct and that the tenure of the office of this petitioner had already expired when the mandate got down to the Insular Supreme Court, no authority is necessary to affirm the proposition that it would be even a perversion of justice to order a man reinstated or inducted into an office the term of which had already expired, an office to which he was not entitled at that time even if charges had not been preferred against him.

So the Board will not devote much attention to the contention made by the petitioner herein that the Supreme Court of Puerto Rico had no jurisdiction to enter the judgment of which the petitioner now complains.

Now, about the Act in itself:

As the distinguished counsel for the petitioner has stated, the Act was approved in 1931. Before that and ever since the American Government acquired the Island by Treaty in 1898, after the Spanish-American War, all Mayors of all the municipalities of Puerto Rico, and all municipal assemblies of all the municipalities of Puerto Rico, have been elected by the people for four years.

But in 1931, as my distinguished colleague said, some sort of political matter sprung up in San Juan and the legislature decided to change the Governmental structure in San Juan.

However, the change was not in the sense that the petitioner contends. The reasons are these:

Section 21 of the Act, the one here in question, provided for the chief executive of the new government. That section, providing for the chief executive of the new government, was presented providing for the election of a city manager, of a Mayor, every four years in the quadrennial general elections usually held in Puerto Rico.

Section 50 of the Act provided for a Board of Commissioners.

The Chief Justice: Where are the Acts referred to in your brief?

Mr. Cuyar: Well, some sections are in Appendix A of Petitioner's Brief and some others are in Appendix A of Respondent's Brief.

Mr. Associate Justice Frankfurter: I want to be sure I understood one thing:

Did you say that was the bill that was introduced, for a four-year tenure?

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: The Bill was explicit for a four-year tenure?

Mr. Cuyar: Section 21 of the Bill provided for the Chief Executive—you will find that, your Honor, in the appendix to the Petitioner's Brief.

That is at Page ——

Colonel Rigby (interposing): Sixty-one.

Mr. Cuyar: Sixty-one. That is right.

As originally presented, the draft of Section 21 provided for the Mayor to be elected by popular vote in the general elections that are to be held in Puerto Rico every four years and that the Mayor would discharge the duties of his office during the term of four years and until such time as his successor, duly elected or appointed, takes possession of the office.

That is the original draft of Section 21.

Mr. Associate Justice Frankfurter: Did the tenure, the four year tenure in your municipalities come in after the change of sovereignty—the four year tenure?

Mr. Cuyar: I think so, Justice Frankfurter.

Mr. Associate Justice Frankfurter: But in all events that was the prevailing tenure up to this 1931 Act?

Mr. Cuyar: Exactly, sir.

So the original draft of Section 21 was in accordance with the prevailing trend or practice in the election of Mayors, but Section 50 of the Act, as originally enacted, provided that the Board of Commissioners created by this Act shall be elected by popular vote at the general elections to be held in 1936 and every four years thereafter.

In other words, originally the Act provided for an elective board of Commissioners and an elective chief executive of the City.

Mr. Associate Justice Reed: Where is the original Section 50 to be found?

Mr. Cuyar: At Page 46 of the Petitioner's Brief, both the original and the amended Section 50.

Of course, Section 50 was approved as presented at that time—

The Chief Justice (interposing): The Court will be in recess.

(Thereupon at 2 o'clock p. m. recess was had until 2:30 o'clock p. m., this date, at which time the following occurred):

Mr. Cuyar: In making reference to the original of this Act, No. 99, as providing for an elective board and an elective chief executive, the point I wanted to make is this: That there was no idea, no proposition, no object, of changing the general practice of electing a chief executive of municipalities and of municipal assemblies in Puerto Rico. However, Section 21 was not passed as originally drafted or presented, the reason being this:

The Court will notice that the original text of section 21 reads that the Mayor will be elected at the general elec-

tions that are to be held in Puerto Rico every four years.

Mr. Associate Justice Jackson: Do you have any officers in the Puerto Rican Government whose tenure ofoffice is for life?

Mr. Cuyar: None, sir, except judicial officers who are appointed by the President with the advice and consent of the Senate here.

Mr. Associate Justice Reed: They are not life tenures?

Mr. Cuyar: Yes, they are.

Mr. Associate Justice Roberts: What about the local judges?

Mr. Cuyar: They are appointed for a term of years.

Mr. Associate Justice Frankfurter: How many cities have a city manager?

Mr. Cuyar: Just San Juan.

Mr. Associate Justice Frankfurter: San Juan?

Mr. Cuyar: Yes.

As I was saying, if Section 21 of the Act, as originally drafted, had been approved, as it was originally presented, then the City of San Juan could not possibly have had a City Manager or a chief executive for about one year and five months.

The reason is this:

The original draft of Section 21 stated that the Mayor would be elected in the general elections to be held in Puerto Rico.

This law was approved in 1931.

General elections would not be held in Puerto Rico until 1932, November, 1932, in accordance with the organic act of Puerto Rico.

Therefore, if this section had been left as presented originally, providing for an elective Mayor, then it could not have been possible to have a City Manager in San Juan for about a year and five months.

That was the reason why Section 21 was not approved as originally presented.

The Chief Justice: Where does the original draft appear?

Mr. Cuyar: At Page 61 of Petitioner's Brief, Appendix E.

However, it could be argued—

Mr. Associate Justice Reed (interposing): Well, do you have a record of the Puerto Rico assembly, such as we have in the Congressional Record here of debates and so forth?

Mr. Cuyar: Well, yes, there is a legislative journal but in this particular case there is none; there is no record of debates or committee reports or anything like that.

Mr. Associate Justice Reed: None of that?

Mr. Cuyar: None of that.

Well, if Section 21—I was saying, and I beg your pardon, —that if the section as originally drafted had been passed it would not have been possible to have a city chief executive for about a year and five months. So it was necessary that it be amended before passage.

It could be argued, though, that in amending it the legislature could have provided for a specific term under the circumstances of the case. I mean, taking into consideration the whole statute.

That was impossible for this reason:

If upon amending Section 21 the legislature would have stated expressly a four-year term for the City Manager, that would have meant that in 1935, four years after 1931, when the Act was approved, the term of the City Manager would have expired.

Now, since Section 50 of the Act, providing for an elective Board of Commissioners, expressly states that the Board of Commissioners shall be elected in the 1936 elections, then from 1935 until 1936 there would not have been a chief executive, even.

That was the dilemma which the legislature faced, and the legislators approved, then, this Section 21 providing that the chief executive should be appointed by the Board of Commissioners created by this Act, and Section 50 was approved stating that the Board of Commissioners created by this Act should be elected for four years, and that the

Board of Commissioners created by this Act should choose the City Manager.

Mr. Associate Justice Frankfurter: Then, how do you account for the further provision that he shall hold office during good conduct?

How does that fit in with the time necessities which you have just given us?

Mr. Cuyar: I do not quite understand the question.

Mr. Associate Justice Frankfurter: As Section No. 21 was passed, it not only took out the elective feature—

Mr. Cuyar (interposing): Yes?

Mr. Associate Justice Frankfurter (continuing): But it also took out the four-year feature and it also added a tenure "during good conduct" rather than leaving it all to the implications for which you argue of Section 50, namely because the Board which is the appointing source has a four-year tenure therefore the appointee must have a four-year tenure.

Mr. Cuyar: Well, that issue was raised in the early stages of the litigation as follows:

The Board argued that "during good conduct" meant that the City Manager was subject to removal by the Board when, in the Board's opinion, good conduct had not been observed by the Mayor.

The Chief Justice: Whether the four years lapsed or not?

Mr. Cuyar: That is right.

But the City Manager argued that that did not mean anything like the Board said; that the grounds for removal were stated specifically in Section 22 of the Act and that "during good conduct" did not mean a thing.

That is exactly what he argued and, as a matter of fact, the prior judgment of the Supreme Court of Puerto Rico held that that was the real intent of the legislature.

Mr. Associate Justice Frankfurter: In its first disposition, did the Supreme Court write an opinion?

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: Where can I find that?

Mr. Cuyar: At Page 1 of the record, sir.

Mr. Associate Justice Frankfurter: Is Justice Wolf still on your court?

Mr. Cuyar: No. Justice Wolf resigned four or five years ago.

Mr. Associate Justice Frankfurter: He was out of this case, was he?

Mr. Cuyar: Yes, he was.

Mr. Associate Justice Reed: Are Sections 9 and 50—I am looking at the record at Page 85 and Page 82 now—Do I understand you to say that Section 50 superseded Section 9 of the Act No. 99?

Mr. Cuyar: Section 9, as the Supreme Court of Puerto Rico viewed it, and as I understand it, provided for a first appointed transitory board, as I call it.

In other words, the Legislature set up a government in 1931 which was to be appointive and which had a tenure until the 1936 general election. So the first Board of Commissioners was appointed and the term of its appointment was until the general elections of 1936.

Mr. Associate Justice Reed: Did the amendatory Act No. 10 follow at a different session of the Legislature from that in which Act No. 99 was adopted?

Mr. Cuyar: Yes, 1937—five or six years later, after the general elections of 1930.

Mr. Associate Justice Frankfurter: May I understand one more thing:

You say that there are no officials in the Island other than officials of the United States Government who have a tenure other than an elective tenure—is that right, a time tenure?

In other words, all Puerto Rico officials have a limited time tenure?

Mr. Cuyar: All of them, yes.

Mr. Associate Justice Frankfurter: All the officials here are elected officials?

Mr. Cuyar: Not all of them.

Mr. Associate Justice Frankfurter: Who is not?

Mr. Cuyar: District Judges are not. Municipal Judges are not.

Mr. Associate Justice Frankfurter: What is their tenure?

Mr. Cuyar: For Municipal judges four years; for the District judges ten years.

Mr. Associate Justice Frankfurter: Of the executive officials in the Island, is there any other office which goes by appointment rather than by popular election?

Mr. Cuyar: Civil Service officials.

Mr. Associate Justice Frankfurter: I mean important ones, not the clerical staff.

Mr. Cuyar: Most of the cabinet officers, what we call cabinet officers are appointed by—

Mr. Associate Justice Frankfurter: The Governor, with the—

Mr. Cuyar (interposing): With the advice and consent of the Insular Senate.

Mr. Associate Justice Frankfurter: My real question is this:

Is there any light to be had in regard to other office holders of a comparable nature to the office of City Manager of San Juan,—that is what I am trying to get at.

Mr. Cuyar: None that I know of.

Mr. Associate Justice Black: Who appoints the Utility Commission?

Mr. Cuyar: The Public Service Commission?

That is appointed by the Governor with the advice and consent of the Senate.

Mr. Associate Justice Rutledge: And the President of the University?

Mr. Cuyar: By the Governor with the advice and consent of the Senate.

Mr. Associate Justice Reed: At one time was the Board of Commissioners composed of more than nine members?

Mr. Cuyar: Never, sir.

The Board of Commissioners of San Juan?

Mr. Associate Justice Reed: Yes.

Mr Cuyar: Never. It was originally composed of five, according to Section 9, all appointed by the Governor; that was the first Board, and then in 1937, I think, Section 50 was amended so as to provide four more members, appointed also. The other five were elected, elected in the general elections.

Mr. Associate Justice Reed: Section 50 seems to expect a continuation in office of those who were appointed.

Mr. Cuyar: Section 50?

Mr. Associate Justice Reed: On Page 85 of the record.

Mr. Cuyar: Yes, as amended.

Mr. Associate Justice Reed: Yes.

Mr. Cuyar: It provided that the five members of the Board of Commissioners elected at the general elections of 1936 should continue in office until the end of the term for which they were elected—that is, four years.

Mr. Associate Justice Reed: Well, were they elected?

Mr. Cuyar: For four years.

Mr. Associate Justice Reed: For varying terms?

Mr. Cuyar: No, sir. The only varying terms and staggered terms were the ones for the first Board of Commissioners, appointed by the Governor with the advice and consent of the Senate.

Mr. Associate Justice Reed: Was there some Act to change that between Act No. 99 and Act No. 10?

Mr. Cuyar: No, sir. Act No. 99 in its section 50 provided that the Board created by this Act shall be elected by popular vote at the general elections to be held in 1936 and every four years thereafter, and the Commissioners appointed by the Governor shall hold office until the first Monday in January, 1937—that is, immediately after the general elections of 1936.

So the general scheme of this statute, as the Court below viewed it, and as the Board contends, was to set up a provisional, appointive government in San Juan from 1931 to the general elections in 1936.

The fact of the matter is that they wanted to jump one election, 1932.

They did. And, in 1936 the elective form of Government again went into effect.

Now, the first City Manager, Mr. Castano, held his term in accordance with the original set-up as I have described, until 1937.

Then, in September of 1936, he resigned his office because of illness, but, before resigning, he set up as a condition that he should be given practically six months salary. And, in my opinion, the Board of Commissioners in granting this leave acted without authority, but it did.

The situation in 1936, after the elections were over, after the petitioner had campaigned as a candidate for office, after the Board of Commissioners, pledged to vote for him, was elected, was that the petitioner asked to be put into office in accordance with the elections already had, and then the officers or officials of the Government asked the Attorney General for an opinion as to whether they could appoint a City Manager.

Well, the Attorney General answered that if the opinion was asked for by the then acting Board of Commissioners, not the one which had just been elected, but the one appointed by the Governor originally, he would not give an opinion because their term would be over and they would not have the right to elect any City Manager then, but, he said, that if the opinion desired was about the power of the original Board of Commissioners to appoint a new City Manager, in view of the leave of absence granted to the first City Manager, then his answer was that there was no power in the original Board of Commissioners to appoint a new City Manager, because Section 25 of the Act says that in case of absence or leave or any vacancy, another official of the Government steps into the office of the official of the Government who is thus absent, and this is the opinion of the Attorney General which is cited by the opponents. That opinion did not involve the question of the tenure of the

City Manager at all; neither did the other opinion rendered to the petitioner himself.

The other opinion of the Attorney General simply covered the following points, and I quote the opinion:

> "I am pleased to acknowledge receipt of your communication of the ninth instant requesting my opinion with respect to (1) the term of the officers and employees of the Capital which were appointed on September 11, 1931; and (2) if the new administration is or is not a continuation of the former."

In other words, neither of the opinions of the Attorney General involved the question of tenure of office of the City Manager.

So on January 4, 1937, the petitioner here was put into the office of City Manager.

In 1940, general elections were held in Puerto Rico again, and another man by the name of Fernando J. Geigel campaigned as a candidate for the office of City Manager, in accordance with the general understanding and construction of the statute as providing for the appointment of a new City Manager every four years.

The party to which Geigel belonged won the election and in 1941 he was appointed.

It should be noticed that Mr. Geigel had been appointed to fill the office upon the ouster of petitioner, prior to the 1940 election, and when Geigel won the election in 1940 he was reappointed to fill the office.

In other words, the Board understood then, as it has always understood, that it was necessary to appoint Mr. Geigel in 1941, as the City Manager, because his term had already lapsed after the elections were held.

Therefore, contemporaneous construction of the statute, practically contemporaneous construction of the statute, by the people and officials concerned, in fact, I might say, by the legislature itself, because this matter came up in 1936, and in 1940, and the legislature met in session after that, in many sessions, and no amendment to this Act was made,—had fixed the meaning of the statute.

Contemporaneous construction, therefore, had fixed the meaning for this statute, and when the question came before the Supreme Court of Puerto Rico it took into consideration all those factors:

It took judicial notice of all these facts and it found that the intention of the Legislature was that the term of office of the City Manager should be the same as that of the appointing power, the Board of Commissioners.

That judgment was appealed from to the Circuit Court of Appeals.

The Circuit Court of Appeals analyzed the opinion of the Supreme Court of Puerto Rico and expressly said that it was not prepared to say that the judgment of the Supreme Court was inescapably wrong. It further said that if it were free to take an independent view, it would be inclined—these are the very words—to disagree with the Supreme Court of Puerto Rico, but that it could not say that the judgment was patently erroneous or patently absurd—those are the phrases used by this court in its different decisions—and, therefore, it affirmed the judgment of the Supreme Court of Puerto Rico.

It will thus be seen, therefore, that the only question before this court is whether this interpretation made by the Supreme Court of Puerto Rico is patently absurd, inescapably wrong, for otherwise, in accordance with the definite rule of this court, the judgment of the Circuit Court should be affirmed.

Mr. Associate Justice Jackson: What distinction, from your point of view and from your law practice in Puerto Rico, do you draw between a judgment being plainly wrong and inescapably wrong?

Mr. Cuyar: I do not know of any better way to answer that question than by reading the following paragraph from the decision of this Court—

Mr. Associate Justice Jackson (interposing): I thought you could add something to what we have already known. There is "wrong", "very wrong," "inescapably wrong"—

Mr. Cuyar (interposing): It has been reiterated many ways since:

> "To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

That is what the Court said in the case of *Sancho Bonet, Treasurer,* v. *The Texas Company,* 308 U. S. 463.

As I see it, your Honor, this means that if there are, or if there is more than one construction of a statute, even though the construction adopted by the Supreme Court of Puerto Rico might seem the less reasonable one, even though this Court may disagree with that construction, even though this Court may disagree with the construction made by the Circuit Court, and even though the construction made by the Circuit Court may seem on appeal to be the most reasonable, yet the judgment should be affirmed.

Mr. Associate Justice Jackson: What I was wondering is whether you regard, in your opinion, from the point of view of the Island, whether you regard this rule as virtually cutting off your right to appeal and whether you consider that there is no use appealing unless you have a pretty good case.

I wonder if you construe it as a virtual denial of your right to appeal unless you have an obviously frivolous decision of your court.

Mr. Cuyar: No. The way I understand the rule you can only appeal with a good case.

Mr. Associate Justice Jackson: A solvent client is not enough.

Mr. Cuyar: No, sir, unfortunately.

I think that the rule expedites cases, avoids unnecessary delays, as, for instance, with respect to the practice of the Circuit Court of Appeals in these cases: The transcript of record is not printed until you file a statement on appeal which shows prima facie that your case is meritorious.

In other words, clients and litigants are saved certain expenses and certain delays by virtue of the rule.

I do not think that appeals should be stimulated unless there is clearly a good ground for appeal.

Mr. Associate Justice Black: Did you represent the Board in the first appeal?

Mr. Cuyar: To the Circuit Court?

Mr. Associate Justice Black: Yes.

Mr. Cuyar: Yes, sir.

Mr. Associate Justice Black: Did you attack the rule when you asked for certiorari, the rule 39 (b)?

Mr. Cuyar: I did not, sir.

I was going to mention that when I took this appeal from the first judgment, to the Supreme Court, or rather to the Circuit Court of Appeals, my opponents obtained summary disposition of my appeal on the basis on Rule 39 (b).

Mr. Associate Justice Black: Did they take the position then that 39 (b) was a bad or a good rule?

Mr. Cuyar: I imagine they took advantage of that; they really obtained the dismissal without hearing.

Mr. Associate Justice Black: Did they oppose the application for certiorari which you had?

Mr. Cuyar: They certainly did.

Mr. Associate Justice Black: So at that time you were hit by the rule?

Mr. Cuyar: That is right.

Mr. Associate Justice Black: And now you are the other way; the position is reversed.

Mr. Cuyar: That is right.

At that time petitioner here availed himself of the rule and obtained dismissal. There was summary disposition made of the principal case.

Mr. Associate Justice Black: Did they ask summary disposition before?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: And got it?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: That was a question as to how much they could interfere with the Board's right to remove the official?

Mr. Cuyar: Yes, the construction of Act No. 99, as to the right to remove, just cause for removal. The Circuit Court dismissed the appeal on the statement of appeal we filed, said it was not willing to make a construction different from that made by the Supreme Court of Puerto Rico in favor of the petitioner, so we applied to this Court for certiorari.

Mr. Associate Justice Black: Did you take the position there that it practically cut off your right of appeal?

Mr. Cuyar: In the petition for certiorari?

Mr. Associate Justice Black: Yes.

Mr. Cuyar: No, sir. We came to this Court on the merits of the case.

As I see it, the merits of the case are in the first judgment. This is only an incident of the case.

This man was ousted from office by the Board of Commissioners on the ground of immoral and improper conduct, and so forth, and the District Court of San Juan said it could not interfere with the decision of ouster, but the Supreme Court of Puerto Rico said that the City Manager could not be ousted except for grave negligence or a crime or a misdemeanor.

We took an appeal from that judgment of the Supreme Court and that appeal was dismissed on the basis of rule 39 (b) of the Circuit Court, and this Court denied certiorari against that dismissal, and when the case went back, the term having expired, the Board filed a petition for stay, and that is the one now before this Court.

Mr. Associate Justice Frankfurter: In any of the cases that the Circuit Court of Appeals has decided in recent years, is there any other opinion in which the Circuit Court of Appeals said that in their view the judgment of the reviewed Supreme Court opinion went beyond the permissible limits of interpretation but they were not free, in their view of what their duty was under our rule, to deal with the matter, even though they committed themselves to the legal proposition that what the Supreme Court of Puerto Rico did went beyond the permissible limits of interpretation.

Is there any other case where the District Court felt that they were so bound by their natural duty to follow what this Court said.

Mr. Cuyar: Yes. In the case of *De La Torre* v. *National City Bank*, that was the view taken.

Mr. Associate Justice Frankfurter: What did they say there?

Mr. Cuyar: They said: If we were free to take a wholly independent view of the question at issue, we would reverse the judgment.

Mr. Associate Justice Frankfurter: I indicated before the recess my trouble with the phrase "wholly independent".

Mr. Cuyar: They said it would be a touch of arrogance.

Mr. Associate Justice Frankfurter: You are not in the next case.

Mr. Cuyar: No, sir.

Mr. Associate Justice Frankfurter: That case really involves the propriety or the practical operation of the rule under which the Circuit Court of Appeals is now operating.

Mr. Cuyar: I know. But in this case that is not involved.

Mr. Associate Justice Frankfurter: It is not involved in this case because they actually heard it.

What is the practical operation of this rule?

Have you any light on that, since it was enforced by the Circuit Court of Appeals?

Mr. Cuyar: I can only say, as I said to Mr. Justice Jackson—

Mr. Associate Justice Frankfurter (interposing): I am not asking your judgment on what you concluded from this Court's opinion.

I would like to know your understanding of the rule under which the Circuit Court is operating in reference to appeals from Puerto Rico.

Mr. Cuyar: You file a statement to show that your appeal is meritorious. If they don't think it is meritorious they dismiss the appeal or affirm the judgment. If they do feel it is meritorius and therefore worthy of consideration and discussion, they let the case go on to regular hearing, and you file briefs, and so forth.

Mr. Associate Justice Frankfurter: That is the mechanics of it. That is just the mechanics of it.

What is the practical operation?

Mr, Cuyar: The practical operation of it is that it has restricted appeals quite a bit.

Mr. Associate Justice Frankfurter: The Court of Appeals also indicated that there are various considerations that come into play properly, naming them, and among them that they do not want to bring on counsel, and they don't want to put litigants to great expense, and so forth.

Do you understand that they concede the rule to be the same as was the rule in this Court in reviewing Territorial judgments?

This is an old problem, of course.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: In the history of this Court and appellate courts.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: In reviewing so-called local law, this is an old problem.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: There may be special emphasis on it when you deal with a body of law like the Puerto Rican law, but the problem is an old problem, namely the deference to be paid the local adjudication of a local rule.

Now, do you understand the pronouncement of the Circuit Court of Appeals for the first Circuit, its rule and practice, as represented by the course of cases and what they state to be that their notion is merely that old doctrine, namely, that this Court when reviewing Territorial courts would defer generously to the local administration, or do they consider themselves to be a rubber stamp or a dead letter?

I should think this is a matter of importance to the Bar and to the people of Puerto Rico.

Mr. Cuyar: It is.

I would not know how to answer your question.

I know they should feel that the rule is just the same as it was seventy years ago; that is my impression.

Mr. Associate Justice Frankfurter: Is it a matter of importance—if you feel free to answer that, representing a public body—is it a matter of importance or a matter of indifference whether there is an opportunity that the Congress has provided an appeal to the Circuit Court of Appeals in cases coming from Puerto Rico—is that a matter of indifference?

Mr. Cuyar: It is not.

Mr. Associate Justice Frankfurter: Which is your answer?

Mr. Cuyar: It is not a matter of indifference.

I am speaking of the Bar of Puerto Rico.

I am vice president of the association.

We want to have the right of appeal.

Mr. Associate Justice Frankfurter: I feel free to ask you, because of this problem is to get the locally informed disinterested local view.

Mr. Cuyar: I feel free to answer your Honor and I want to answer your Honor:

We do not want final judgments in the Supreme Court of Puerto Rico. We do want the right to take an appeal if we feel that the judgment is erroneous.

Of course that is not incompatible with our desire that the judgments of the Supreme Court of Puerto Rico should

be respected by the Federal Courts, the same as the state Supreme Court judgments lay down the law in the states. So there is—

The Chief Justice (interposing): We cannot do that; we review the law of Puerto Rico but when it comes here we do not review the law of the states?

Mr. Cuyer: I do not understand.

Mr. Associate Justice Frankfurter: You mean that there is an analogy to the old Territorial courts of New Mexico, for example?

Mr. Cuyar: Of New Mexico, or Texas.

The Chief Justice: Then what do we do when we do that?

Mr. Cuyar: I beg your pardon?

The Chief Justice: I say what do we do when we do that? The Circuit Court of Appeals of the First Circuit and this court—how much weight do we give to Puerto Rico?

Mr. Cuyar: That is quite hard to answer. That is a matter of the degree of deference that should be paid to their judgment.

This court says it is not sufficient to disagree.

Mr. Associate Justice Frankfurter: Under the existing situation this happens to be a problem that I have long had an interest in, as you probably know?

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: There happens to be two angles to this thing in the present jurisdictional question.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: Namely the Congress gives direct appeal when the monetary amount is appropriate. The old situation was that you had to have $25,000 involved to get here.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: With reference to the Puerto Rican appeals, Congress still requires a substantial situation in terms of money, and requires $5,000.

So the Congress, for reasons that I do not profess to understand, the Congress retained apparent jurisdiction in the Circuit Court of Appeals, not discretionary but absolute, subject to rules similar to ours, that a frivolous appeal is not an appeal.

In addition to that, it gave a further opportunity of correction both of what the Supreme Court of Puerto Rico did and what the Circuit Court of Appeals did, by granting the right of certiorari here.

So you have a system of appeals that brings into play this problem of deference in a very sharp way.

You have one situation, taking the Philippine Islands cases, where the only opportunity for review is by petition to this court on certiorari.

Then come into play all considerations that determine whether a petition should be granted or not, even though the judgment below is as wrong as can be.

That is not the same as the situation that applies to Puerto Rico.

Therefore, a different problem is presented.

I am off the deference now.

Mr. Cuyar: Yes.

I just wanted to say in connection with that that with the old Territories, the litigants in the old Territories had a direct right of appeal to this court and then this Court initiated the deference rule even though it was a matter of right, because, as I see it, the rule is based on policy.

The Chief Justice: On what?

Mr. Cuyar: On policy.

Mr. Associate Justice Frankfurter: Very sound policy.

Mr. Cuyar: Yes.

Mr. Associate Justice Douglas: Justice Reed expressed it clearly. The last was the opinion in 315 United States—

Colonel Rigby (interposing): It is at Page 16 of our Brief.

Mr. Cuyar: That quotation is:

"We cannot say that an interpretation placed by the Supreme Court of Puerto Rico upon statutes whose meaning is so open to doubt is plainly incorrect. Accordingly, though the interpretation suggested by the Circuit Court of Appeals may be equally plausible, it erred in reversing the judgment of the Insular Court."

Mr. Associate Justice Douglas: Is that too strong?

Mr. Cuyar: I think it is more or less the same thing as the other expression.

Mr. Associate Justice Frankfurter: What is the philosophy—the one that Justice Holmes indicated?

Mr. Cuyar: That is right. It is to provide for orderly development—

Mr. Associate Justice Frankfurter (interposing): The philosophy is that at a distance you may misconceive the letters of the locality, things may be written and you may read them, but there are infusions that do not appear.

Mr. Cuyar: Which the local courts take into consideration.

Mr. Associate Justice Frankfurter: The whole question is what the Circuit Court of Appeals' understanding of that rule is. If they think as a matter of fact that you must prove your wrong the way you prove a multiplication or a sum is wrong, that is one thing.

That is about where they are now.

Mr. Cuyar: This particular case—

Mr. Associate Justice Frankfurter (interposing): Not this particular case.

Mr. Cuyar: I think practically that is the way they are.

Mr. Associate Justice Frankfurter: And you do not approve of that, do you?

Mr. Cuyer: No, sir.

Of course that issue is not in this case.

Mr. Associate Justice Frankfurter: I ventured to ask about the broader question because we have the next case in which you do not happen to be appearing.

Mr. Associate Justice Black: How many judges do you have in the Supreme Court?

Mr. Cuyar: Five.

Mr. Associate Justice Black: How are they selected?

Mr. Cuyar: They are appointed by the President with the advice and consent of the Senate.

Mr. Associate Justice Black: For lifetime?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: And the judges of the Supreme Court of Puerto Rico are there for a lifetime?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: What is the next court below that?

Mr. Cuyar: The District Court.

Mr. Associate Justice Black: Is there any court below that?

Mr. Cuyar: The Municipal Court.

Mr. Associate Justice Black: You appeal from the Municipal Court to the District Court?

Mr. Cuyar: That is right.

Mr. Associate Justice Black: And from the District Court to the Supreme Court?

Mr. Cuyar: That is right.

Mr. Associate Justice Black: And this case started where?

Mr. Cuyar: The District Court, well, the case started in the formulation of charges, brought by the Board of Commissioners against the Chief Executive. The charges were tried. The Board decreed removal of the Mayor and then the Mayor went to the District Court to apply for certiorari to review the action of the Board.

Mr. Associate Justice Black: What does the Court mean by the statement that this petitioner was a candidate for Manager in 1936?

Was that after the appointment had been obtained by him on which he is now relying?

Mr. Cuyar: No.

Mr. Associate Justice Black: When was he appointed?

Mr. Cuyar: In 1937, after the 1936 elections; after his Party won the 1936 elections.

Mr. Associate Justice Reed: Was it before the 1936 Commissioners took office?

Mr. Cuyar: After the 1936 Commissioners took office he was appointed.

Mr. Associate Justice Black: And then as to the 1940 election they refer to, they do not state he was a candidate.

Mr. Cuyar: No, he was not. There was another candidate. He was not a candidate because he was removed.

Mr. Associate Justice Black: Another candidate of the Party of which he was elected?

Mr. Cuyar: He was not a candidate in 1940 of that Party. He had left that Party and had joined another party.

Mr. Associate Justice Black: Does that appear in the opinion?

Mr. Cuyar: Yes, that appears in the opinion from the Supreme Court of Puerto Rico. Another man was a candidate of the same Party, and the same Party won the 1940 election, and the other man was appointed City Manager in accordance with the result of the election of 1940.

That is all I have to say.

Mr. Associate Justice Douglas: From the point of view of your Bar Association, is this an extreme rule or an undesirable rule?

Mr. Cuyar: Well, sir, from the point of view of the Puerto Rican Bar Association the rule is not extreme at all if applied with discretion.

In other words, the rule in itself is not bad, but a misapplication of the rule may have bad effects.

The Chief Justice: And, looking at the whole field, do you say it has been applied with discretion or not?

Mr. Cuyar: My honest opinion is it has not.

Mr. Associate Justice Douglas: Except in this case?

Mr. Cuyar: Well, I was talking generally.

Mr. Associate Justice Frankfurter: You were asked what the general effect was, were you not?

Mr. Cuyar: Sure. That is the general effect.

I do not know of any occasion in which the Circuit Court of Appeals has reversed the Supreme Court of Puerto Rico stating that there is an inescapable error. That may be an indication.

I shall submit the case.

Concluding Argument on Behalf of the Petitioner.

By Colonel William Cattron Rigby.

Colonel Rigby: If the Court please, I do not think that my distinguished opponent and I are very far apart on the matter of the rule. I may want to say a little more about the rule in the form that it has been formulated under Rule 39 (b) and the practical workings of it in arguing the next case immediately after this one.

So far as the history of the present case is concerned I would say just one word, perhaps:

Counsel says that in his opinion the Board of Commissioners in granting a leave of absence to the first City Manager, Mr. Castano, acted without authority, but it did it.

Now, in doing it it acted in accordance, strictly, with two opinions of the Attorney General of Puerto Rico, rightly or wrongly.

Mr. Castano for the matter of his health apparently resigned his office. By his letter of September 11, 1936, he said that he was going to resign and he asked for 150 working days leave of absence, which is practically six months, to March 18, 1937, and gave notice that at that time tendered his resignation effective at that latter time.

So, of course, whatever one may think as to the tenure of office, it was manifest that office would become vacant at that time, and it was perfectly proper for a candidate to announce himself as Mr. Castro did as a candidate of his Party for appointment to the office when it should become vacant, and he was a candidate whom everybody knew that Party would appoint whenever they got an opportunity to do so.

Now, they carefully did not, however, appoint him when they came into office.

The Board of Commissioners on January 4, 1937, in accordance with the two opinions of the Attorney General, one of December 8, 1936, and the other rendered on January 30, 1937, put through that machinery because everybody was willing that Mr. Castaño take a leave of absence as Treasurer and the next man under him also take a leave of absence. Mr. Castaño before taking a leave of absence appointed Mr. de Castro, Director of Health and Charity, and when the ones above took leave of absence he became automatically acting City Manager, but he was not appointed City Manager until the adoption of the resolution of March 19th when Mr. Castaño's leave of absence expired.

So everybody seemed to be, as far as the record was concerned, at one as to the idea that it was a permanent appointment as City Manager and, as I say, there is no suggestion that we can find anywhere in the record until October 27, 1941, when this petition for stay was made to the Insular Supreme Court, that it was otherwise.

Just one word about another point of that that we have not said much about.

Mr. Associate Justice Black: What about the appointees under Section 39?

Colonel Rigby: Oh, they are analogous to Civil Service employees.

Mr. Associate Justice Black: For life?

Colonel Rigby: For the time the appointing officer holds.

Mr. Associate Justice Black: Then they would be appointed for life, too?

Colonel Rigby: If they were appointed by the City Manager they would be appointed for life.

Mr. Associate Justice Black: Is that a contract?

Colonel Rigby: No.

Mr. Associate Justice Black: Has that question come up?

Colonel Rigby: Now we are getting off a little—I suppose not.

We had two cases when I represented the Government of Puerto Rico, under the Civil Service laws regarding reduction of salaries of employees during the period of the depression, and it was held by the Circuit Court of Appeals, and this Court denied certiorari, that it was not a contract and the Legislature did have the power to reduce the pension of retired Civil Service employees.

Mr. Associate Justice Black: But this gives authority to, it seems, appoint employees and stenographers and so forth for life?

Usually you do that by contract.

Colonel Rigby: Well, I don't know if you call the Civil Service employee—a stenographer, of course, could be.

It is analogous, somewhat, and apparently intended to be—I am guessing now—to the Civil Service establishment of Puerto Rico, to Civil Service employees of the Insular Government.

Mr. Associate Justice Black: Do you know of any cases that have come up by employees who claimed to be appointed for life and the contract could not be impaired?

I mean under the law.

Colonel Rigby: No, not under this law, but under the 1931 Civil Service law.

Mr. Associate Justice Black: I see your adversary nodding his head as if there may be.

Colonel Rigby: I do not know of any, as far as that is concerned, but on the other point, of course, we have made one of the grounds of the petition for certiorari and we have argued it in the brief.

The Insular Supreme Court, as the appellate tribunal, had no power to change its judgment and amend it by staying the execution of this part of it upon a motion to stay because of the supposed expiration of the term of office. That was a matter that should have been, if it was to be brought up, sent back to the District Court, the Court that has the power to take evidence, and should have been tried before a tribunal that could take evidence, and not be dealt

with simply as a matter of pure law if it were contended that there was an ambiguity in Section 21.

Mr. Associate Justice Black: What evidence should have been taken?

Colonel Rigby: We have put it before the Court here in regard to certificates. We think this Court has power to take judicial notice of it, just as much power to take judicial notice of it as the Insular Supreme Court had to take notice that de Castro was a candidate for the Legislature in 1940. That is, these facts shown in these different resolutions that were adopted by the Board giving the definite history of it. The Supreme Court of Puerto Rico did not have much of that before it and we think on a matter of that kind there were both matters of public notice which could properly be taken judicial notice of, and other matters in detail which the Court could not take judicial notice of—if there was any evidence of that kind to be heard it should have been heard to determine whether or not, assuming there was some ambiguity, the statute should be construed as meaning what on its face it does, or meaning something else, that that was a matter that was not within the jurisdiction of the Supreme Court of Puerto Rico as an appeal tribunal to decide in that way, and, on the other hand, if it was within the jurisdiction of that appellate tribunal, then it having been equally in the jurisdiction of this court on certiorari and the Supreme Court of Appeals on appeal there, and not raised there, it is *res adjudicata*.

So, one way or another, they had no jurisdiction to consider it.

But that, of course, is really a minor matter because the question is whether or not the term had expired and whether or not—just one other word—it may not really be significant but we think it is, that this Section 21 as first presented to the Legislature contemplated a four-year term and the measure, as it came out, has a term "for good conduct" as City Manager. Now, the fact that there was some inconsistency in the form of it and that that might have left

the city for a year or five months without a chief executive, as first presented to the Legislature, is hardly to be considered sufficient reason for changing the whole plan from the Mayor to the City Manager and for changing the whole plan of the four-year term to a "good conduct" period, unless there was a real definite purpose in creating the City Manager form of Government for this one city, the Capital of Puerto Rico.

(Thereupon at 3:27 o'clock p. m. the oral argument in the instant case was concluded.)

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SUPREME COURT OF THE UNITED STATES.

No. 349.—October Term, 1943

Carlos M. DeCastro, Petitioner, vs. Board of Commissioners of San Juan. | On Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[May 29, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

In this case the petition urged as a ground for certiorari, which moved us to grant it, that the decision of the Court of Appeals below, as in a companion case, No. 497, *Mario Mercado e Hijos* v. *Commins*, decided this day, "practically closes the doors of the appellate court below" to appeals which the statutes of the United States allow to Puerto Rican litigants in the insular courts and "discriminates in favor of the fortunate persons" who, through diversity of citizenship, can take their cases to the United States District Court for Puerto Rico,[1] instead of to the insular courts.

Petitioner brought the present proceeding by petition for certiorari in the District Court of San Juan, Puerto Rico, to review the action of respondents, the Board of Commissioners governing the City of San Juan, in removing petitioner from the office of city manager to which the Board had appointed him. The District Court of San Juan sustained the Board. On appeal the Supreme Court of Puerto Rico reversed the insular District Court and directed petitioner's reinstatement. 57 P. R. 149. On appeal to the Court of Appeals for the First Circuit under 28 U. S. C. § 225, that court affirmed, 116 F. 2d 806, and this Court denied certiorari, 314 U. S. 614.

On the remand the Supreme Court of Puerto Rico, on motion of respondents, entered judgment staying execution of its first judgment insofar as it ordered petitioner's reinstatement, on the ground that petitioner's term of office had expired in February, 1941, after the decision of the Court of Appeals on the first ap-

[1] See 48 U. S. C. § 863.

peal. 59 D. P. R. 676 (Spanish Edition). Construing the applicable statutes of Puerto Rico in the light of the practical construction given to them by public officials and political parties of the island, and other matters of which it took judicial notice, the insular court came to the conclusion that "the tenure of office of the City Manager . . . is that of four years, provided that during the same he observe good behavior". On appeal from this judgment the Circuit Court of Appeals affirmed, 136 F. 2d 419. We granted certiorari, —U. S. — for the reason already stated and because some observations in the opinion of the Circuit Court of Appeals have raised serious questions with respect to the appropriate rule governing decision of cases involving local laws, brought from the insular courts of Puerto Rico for review by the Court of Appeals for the First Circuit and by this Court.

The Court of Appeals, in affirming the judgment of the Supreme Court of Puerto Rico, pointed out that § 21 of Act No. 99 of 1931, which established the government of the city of San Juan, the capital of Puerto Rico, provided that the city manager "shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct". It said, "If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of § 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause 'and shall hold office during good conduct' as meaning that 'the tenure of office of the city manager of the capital is that of four years, provided that during the same he observe good behavior.'" But it felt constrained to affirm the judgment of the Puerto Rican tribunal by our decision and opinion in *Bonet* v. *Texas Company*, 308 U. S. 463, 471.

In that case, in reversing a decree of the Circuit Court of Appeals which had reversed the Supreme Court of Puerto Rico on a point of local law, we said, "to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous." And since the Court of Appeals in this case was not prepared to say that the judgment now under review is "inescapably wrong", and as it thought that this Court's statement in the *Bonet* case had reduced the duty of the Court of Appeals to the performance of a mere mechanical function, it felt compelled to affirm the judgment. It also suggested that, as the rule of decision

applicable to appeals from the insular Supreme Court, as announced by the *Bonet* case, had not been applied in appeals from the United States District Court for Puerto Rico, different interpretations of local law might be established in the Court of Appeals, depending on whether the case was appealed from the insular court or from the United States District Court for Puerto Rico.

Our opinion in the *Bonet* case was the culmination of efforts by this Court, beginning with *Garcia* v. *Vela*, 216 U. S. 599, 602 (1910); *Lewers & Cooke* v. *Atcherly*, 222 U. S. 285, 294 (1911); and *Ker* v. *Coudens*, 223 U. S. 268, 279 (1912), to insure a review by the federal courts of decisions of the local courts of our insular possessions in matters of peculiarly local concern which should leave appropriate scope for the development by those courts of a system of law which differing from our own in its origins and principles, would nevertheless be suitable to local customs and needs. In thus interpreting the function of the federal appellate courts in reviewing decisions of the insular tribunals we only followed a principle which had long been established for appeals to federal courts from the courts of our territories within the United States.[2]

From the beginning we have recognized that the appellate review of insular cases was not given to the federal courts for the purpose of superimposing upon the Spanish law our common law preconceptions, except so far as that law must yield to the expressed will of the United States. *Diaz* v. *Gonzales*, 261 U. S. 102, 105-6. Hence we have emphasized as a cardinal principle of review in such cases that the mere fact that our own system of law and statutory construction would call for the application of one rule to a given set of facts, does not preclude the adoption of a different one by the insular courts. See *Waialua Co.* v. *Christian*, 305 U. S. 91, 109. If the rule thus announced by the insular court is one which is not plainly inconsistent with established principles of the local law, or in their absence is one accepted by the practice of the community, it will not be rejected here merely because it is

[2] Sweeney v. Lomme, 22 Wall. 208, 213; Northern Pacific R. Co. v. Hambly, 154 U. S. 349, 361; Fox v. Haarstick, 156 U. S. 674, 679; Armijo v. Armijo, 181 U. S. 558, 561; Copper Queen Min. Co. v. Terr. Bd. Equalization of Arizona, 206 U. S. 474, 479; Lewis v. Herrera, 208 U. S. 309, 314; English v. Arizona, 214 U. S. 359, 361, 363; Santa Fe County v. Coler, 215 U. S. 296, 305, 307; Albright v. Sandoval, 216 U. S. 331, 339; Treat v. Grand Canyon R. Co., 222 U. S. 448, 452; Clason v. Matko, 223 U. S. 646, 652; Gray v. Taylor, 227 U. S. 51, 56-57; Phoenix R. Co. v. Landis, 231 U. S. 578, 579-580; Santa Fe Central Ry. Co. v. Friday, 232 U. S. 694, 700.

not in logical harmony with the rules which we would apply to a community within the United States. It will be rejected only on a clear showing that the rule applied by the local court does violence to recognized principles of local law or established practices of the local community.

The guiding principle, which is incapable of statement in a short formula, has been variously phrased in terms which in every case must be interpreted in the light of the particular situation to which they were applied.[3] But the principle which these phrases were intended to express has not been more accurately and comprehensively stated than by Mr. Justice Holmes in words which are completely applicable to the present case, in *Diaz* v. *Gonzales*, *supra*, 105-6:

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299; *Nadal* v. *May*, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never

[3] Given the conditions which, as we have pointed out, call for the acceptance here of the decision of the local court, this Court has said that its decree must be accepted here unless "we thought it clearly wrong," Santa Fe Central Ry. Co. v. Friday, 232 U. S. 694, 700, unless "constrained to the contrary by a sense of clear error committed", Villanueva v. Villanueva, 239 U. S. 299, Matos v. Hermanos, 300 U. S. 429, unless "manifest error be disclosed", Fox v. Haarstick, 156 U. S. 674, 679; English v. Arizona, 214 U. S. 359, 363; Santa Fe County v. Coler, 215 U. S. 296, 305; Treat v. Grand Canyon Ry. Co., 222 U. S. 448, 452; Waialua Co. v. Christian, 305 U. S. 91, 109, "except upon an inescapable conclusion that it was wrong", Diaz v. Gonzales, 261 U. S. 102, 105, unless "plainly incorrect", Puerto Rico v. Rubert Hermanos, 315 U. S. 637, 646. In other cases, in affirming the decision of the local court, we have said that we will accord to its decision "great if not controlling weight", Lewis v. Herrera, 208 U. S. 309, 314; or "great weight", Lewers & Cook v. Atcherly, 222 U. S. 285, 294; cf. Cordova v. Folgueras, 227 U. S. 375, 378-9; or that we would "lean toward the interpretation adopted by the local court", Copper Queen Mining Co. v. Arizona Bd., 206 U. S. 474, 479; English v. Arizona, *supra*, 361; Clason v. Matke, 226 U. S. 646, 653, Gray v. Taylor, 227 U. S. 51, 57; or that we were "not disposed to disturb" its construction, Albright v. Sandoval, 216 U. S. 331, 339; Armijo v. Armijo, 181 U. S. 558, 561; cf. Phoenix Ry. Co. v. Landis, 231 U. S. 578, 579-80; and have spoken of the "caution to be used before overruling" local decisions, Fernandos & Bros. v. Ojeda, 266 U. S. 144, 146.

could have got from the books. In this case a slight difference in the caution felt in dealing with the interest of minors (*Baerga* v. *Registrar of Humacao*, 29 P. R. 440, 442,) and a slight change of emphasis in the reading of statutes, explain the divergence between the Supreme Court and the Circuit Court of Appeals."

Beyond the fact that common law judges in such cases are reviewing civil law decisions, it is of significance that considerations relevant for decision must be drawn from an environment unfamiliar to and far removed from that in which the reviewing court sits. That which is familiar and accepted in the island forum, in construing a statute or formulating a rule of law, may appear strange or unorthodox in a common law setting. In bridging gaps between legal systems having different origins and history, and governing two different polities, the rule we have announced has special importance.

Repeated admonitions that in cases coming from the Puerto Rican insular courts to the federal courts for review, where the Constitution or statutes of the United States were not involved, great deference must be paid to local decisions, having failed of their purpose, see *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505,[4] we restated them in more emphatic form in *Bonet* v. *Texas Company, supra*, 470, in the sentence quoted in the opinion below which we have repeated here. In order that its true purport might not be misunderstood we accompanied the sentence by the statement of Mr. Justice Holmes in *Diaz* v. *Gonzales, supra*, 105-6, which we have quoted, and in the light of that exposition we added: "Such a judgment of reversal [by the Circuit Court of Appeals] would not be sustained here even though we felt that of several interpretations that of the Circuit Court of Appeals was the most reasonable one".

Thus interpreted and read in its context the principle, as restated in the *Bonet* case, that to justify reversal by the federal courts of a decision of an insular supreme court in a matter of local concern, "the error must be clear or manifest; the interpretation must be inescapably wrong", is not a mere mechanical device which requires or admits, save in exceptional cases, of the summary disposition of appeals from that court. Nor does it

[4] See also Diaz v. Gonzales, 261 U. S. 102; Fernandez & Bros. v. Ojeda, 266 U. S. 144; Matos v. Alonzo Hermanos, 300 U. S. 429; Puerto Rico v. Rubert Hermanos, 315 U. S. 637; and similarly as to review of decisions of the Hawaiian Supreme Court, Waialua Co. v. Christian, 305 U. S. 91.

minimize the importance or dignity of the appellate function in such cases. On the contrary, we think that it imposes on the Court of Appeals and on this Court the peculiarly delicate task of examining and appraising the local law in its setting, with the sympathetic disposition to safeguard in matters of local concern the adaptability of the law to local practices and needs. It is one which ordinarily cannot be performed summarily or without full argument and examination of the legal questions involved. But if in the light of such an examination it is found that the rule adopted by the local tribunal is an intelligible one, not shown to be out of harmony with local law or practice, it is not to be rejected because we think a better could have been devised or because we find it out of harmony with our own traditional system of law and statutory construction.

Nor does it follow that the deference due, on appeals from the local tribunals, to their understanding of matters of local concern will lead to the establishment of a local law differing from that developed in decisions in appeals from the federal district courts sitting in our insular possessions. It is not any the less the duty of the federal courts in cases pending in the federal district court or on appeal from it to defer to that understanding, when it has found expression in the judicial pronouncements of the insular courts, *Nadal* v. *May*, 233 U. S. 447, 454; *Diaz v. Gonzales*, *supra*, 105; *Waialua Co.* v. *Christian*, *supra*, 109. Once understood what deference is to be paid, the problem is comparable to that presented when, upon appeals from federal district courts sitting in the states, the federal appellate courts are required to follow state law under the rule of *Erie* v. *Tompkins*, 304 U. S. 64. See *Wichita Company* v. *City Bank*, 306 U. S. 103; *Huddleston* v. *Dwyer*, No. 628, decided May 15, 1944.

There remains for consideration the appropriate application of these principles to the facts of the present case. The Act of the Puerto Rican legislature of May 15, 1931, Act No. 99 of 1931, established a special form of city government for the capital city, San Juan.[5] Legislative powers are vested in a Board of five

[5] The form of government for other municipalities in Puerto Rico is prescribed by Act No. 53 of 1928, which provides for a Mayor to be elected "in the same manner required by this Act for members of the municipal assembly" (§ 29), and hence presumably to serve a term of four years (*id.* § 17).

Commissioners; the first Commissioners were to be appointed by the Governor with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively (§ 9), but the Commissioners so appointed were to hold office only until the first Monday in January, 1937, (§ 50), and thereafter the "Board of Commissioners created by this Act" was to be elected at the general election held in 1936 and every fourth year thereafter (§ 50).[6] The Act provides that the City Manager, who is the chief executive of the city, "shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct" (§ 21). He "may be removed by the Board of Commissioners, for just cause" after hearing, and causes for removal are enumerated (§ 22). Five other administrative officers are appointed by the City Manager (§ 26), and an Auditor is appointed by the Board of Commissioners (§ 36); the provisions as to their tenure of office and removal by the agency appointing them (§§ 27, 36) are identical with those for the City Manager,[7] save that only as to the City Manager does the Act specify a tenure of office "during good conduct." Other employees, appointed by the officers under whom they serve, "shall be appointed for the term for which each officer is appointed", and are also removable for cause after hearing, the causes not being specified, however (§ 39). No provision is made for bringing such employees within the Puerto Rican Civil Service Act, Act No. 88 of 1931, adopted four days before the adoption of Act No. 99.

The Puerto Rican Supreme Court refused to hold that the provision that the City Manager "shall hold office during good conduct" so conclusively established that he was to hold office for life as to preclude resort to extrinsic evidence of legislative intention. It held that his term was the same as that of the Board of Commissioners which appointed him, so that petitioner, who was appointed in 1937, by a Board of Commissioners elected for four years, held office for "four years provided that during

[6] By Act No. 10 of 1937 the Board was increased to nine, beginning in 1941, four Commissioners to be appointed every four years by the Governor with the advice and consent of the Puerto Rican Senate, and five to be elected as previously provided.

[7] In the English text the City Manager is removable for "inexcusable *negligence* in the performance of his duties", the officers appointed by him for "inexcusable *ignorance* in the performance of their duties" (italics added). In the Spanish text the word is "negligencia" in both cases.

the same he observe good behavior."[8] We cannot say that these holdings were so clearly wrong as to require a federal appellate court to refuse to pay deference to the insular court's decision.

While a provision that an office be held "during good behavior" is generally deemed indicative of an intention to create a life tenure unless cause for removal arises, see *Matter of Hennen*, 13 Pet. 230, 259; *Smith* v. *Bryan*, 100 Va. 199, 203; 40 S. E. 652, 653; *Chesley* v. *Council of Lunenberg*, 28 Dominion Law Rep. 571, 572, it has not been regarded, even where traditional notions of Anglo-American law prevail, as a rigid formula precluding any other construction.[9] And a tenure for a period of years during good behavior has not been regarded as a contradiction in terms by American courts.[10] In *Shurtleff* v. *United States*, 189 U. S. 311, 316, this Court recognized and applied the strong presumption against the creation of a life tenure in a public office under the federal government. To hold that the City Manager was appointed for life would, according to the terms of § 39, give to all employees appointed by him a tenure for his life. An intention to create such an *estate pur autre vie* in a public office would at least be somewhat unusual. On the other hand, if they are to be

[8] We need not consider what, under this construction, was the term of office of the City Manager first appointed in May, 1931. An admissible construction would be that the Board of Commissioners appointed by the Governor to serve until January, 1937 was regarded as a single body with a five year term, despite the annual changes in its membership, and hence the City Manager, whose term of office was that of the body appointing him, also had a tenure of some six and one-half years. At least this conforms to what in fact occurred.

[9] State courts have held that a provision for tenure "during good behavior" does not preclude the termination of the tenure by good faith abolition of the office, Shira v. State, 187 Ind. 441, 119 N. E. 833; that such a provision is not necessarily inconsistent with a constitutional restriction on the number of years for which the office can be held but will be read as creating a tenure for a term of years during good behavior, Callaghan v. Tobin, 40 Tex. Civ. App. 441, 448, 90 S. W. 328, 331; Callaghan v. Irvin, 40 Tex Civ. App. 453, 459, 90 S. W. 335, 338; Callaghan v. McGown, 90 S. W. 319, 322 (Tex. Civ. App.); Newmeyer v. Krakel, 110 Ky. 624, 640, 62 S. W. 518, 523; but cf. Stuart v. Ellsworth, 105 Me. 523, 75 Atl. 59; Roth v. State, 158 Ind. 242, 266-8, 63 N. E. 460, 468-9; and that a provision that officers appointed by the Mayor and Council shall hold office "during good behavior or until they may be severally removed by the Mayor or by three-fourths vote of the Council . . . " authorizes removal at will by the Mayor or Council, Smith v. Bryan, 100 Va. 199, 40 S. E. 652; cf. People *ex rel.* Maloney v. Douglas, 195 N. Y. 145, 150, 87 N. E. 1070, 1072. *Contra*, Chesley v. Council of Lunenberg, 28 Dominion Law Rep. 571. And in construing such provisions the courts have attributed weight to the practical construction placed on them by the public officials concerned, Klink v. State, 207 Ind. 628, 633, 194 N. E. 352, 354; Smith v. Bryan, *supra*, and to supposed anomalies resulting from a contrary construction, Smith v. Bryan, *supra*.

[10] Bruce v. Fox, 1 Dana (Ky.) 447, 452 *et seq.*; see cases cited *supra* note 9.

deemed appointed for their own lives, the result would be that on the death or resignation of one City Manager, his successor would be unable to select even his most immediate subordinates and a life tenure would be implied for a large group of municipal employees in disregard of the rule of *Shurtleff* v. *United States.*

Moreover there is no provision that the other municipal officers are to serve during good conduct, and § 39 seems to assume that they shall have defined terms of office. To hold that they could be appointed for life would be inconsistent with the rule of *Shurtleff* v. *United States, supra,* which the insular court accepted and approved. Since the Act is silent as to their terms of office, they can presumably be appointed for any term not exceeding that of the officer appointing them. The interpretation contended for by petitioner would seemingly produce the result that all of the other city officers, save the Auditor, and the employees in their respective offices, could be appointed for the life of the City Manager, unless he should, as the Puerto Rican court assumed he could, decide to appoint them for a shorter term (see §§ 26, 39). In the latter case appointees of other officials, themselves appointed for short terms, would necessarily have a like tenure of office (§ 39), while those of the City Manager would have a tenure for his life, and those of the Auditor a tenure of four years. Such incongruities the Puerto Rican court thought weighed heavily against the contention that petitioner's tenure was for life. This is the more so because the appointees of the City Manager and of officers appointed by him include most of the municipal officers and employees, none of whom are subject to the insular civil service laws, but who could be appointed for petitioner's life should petitioner's construction of the Act prevail.

In addition to considering the consequences of such a holding the Puerto Rican Supreme Court looked to the practical construction placed on the Act by the political parties of Puerto Rico, as shown by facts of which it could properly take judicial notice. It said that "the political parties of the Island have always construed this statute in the sense that the term of office of the City Manager of the capital is that of four years." It pointed out that at the general election held in 1936 and at that held in 1940 each of the political parties participating proposed a candidate for the office of City Manager, although that office did not appear on the ballot. It said that it was well known that petitioner was

the candidate of the winning party at the 1936 election and was appointed City Manager by the newly elected Board of Commissioners to replace the then incumbent, and that another was the candidate of petitioner's party at the 1940 election, and was appointed City Manager by the newly elected Board of Commissioners. This practical construction by the electorate and political parties, of which petitioner was himself the beneficiary,[11] strongly supports the interpretation of the Act as conferring on the City Manager a tenure no longer than that of the Board of Commissioners which appointed him.

In view of these considerations and of the principles long observed by this Court in reviewing decisions of the insular courts, which we have stated, we cannot say that we should not defer to the view of the Supreme Court of Puerto Rico that the meaning of § 21, when examined with the related provisions of Act No. 99, in the light of the prevailing practical construction of it, is not so plain and unambiguous as to preclude resort to extrinsic aids to interpretation. Nor can we say, that the practical construction given the Act, together with the strong presumption against life tenures, and the principle, accepted by the Supreme Court of Puerto Rico on the authority of numerous American decisions, that ambiguities should be resolved in favor of the shorter term of office,[12] were clearly insufficient to support the construction which it adopted.

Petitioner calls to our attention an opinion of the Attorney General of Puerto Rico, dated January 30, 1937, stating that "The administrative officers of the Capital . . . were appointed during good behavior" and that the appointments "participate of the nature of a life tenure." He also refers to correspondence of the first City Manager which could be taken as supporting respondent's position as much as it does petitioner's. It does not appear that these were called to the attention of the Supreme Court of Puerto Rico, but in any event they do not, in our opinion,

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11 The courts below did not consider, and the facts before us do not enable us to decide, whether should petitioner have prevailed in his construction of the Act as providing a life tenure, he could also establish his right to the office over that of the first incumbent, whom he superseded.

12 The Puerto Rican Supreme Court cited Aggeler v. Dominguez, 217 Cal. 429, 19 P. 2d 241; Lowrie v. Brennan, 283 Mich 63, 276 N. W. 900; Chamski v. Board of Auditors, 288 Mich. 238, 284 N. W. 711; Dobkins v. Reece, 17 S. W. 2d 81 (Tex. Civ. App.); Smith v. Bryan, *supra*, n. 9; 135 A. L. R. 1173, 1175.

counterbalance the weight rightly to be given to the decision of the insular Supreme Court as the ultimate insular interpreter of the local law. We have considered but do not find it necessary to discuss other contentions of lesser moment, most of which were dealt with in the opinion of the Court of Appeals below, and none of which call for a conclusion different from that which it reached.

Affirmed.